




**TITLE IX/VAWA
INVESTIGATOR TRAINING**

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TELL US ABOUT YOURSELF 


How many investigations of Title IX matters have you participated in?

- Not applicable (I have a different role in the process)
- None
- Less than 10
- 10 or more

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AGENDA 

- Introduction and Legal Landscape
- Overview of the Process
- Working with the Parties
- Stages of Investigation
- Drafting an Investigation Report
- The Decision-Making Process
- Weighing Evidence and Assessing Credibility




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TERMINOLOGY



- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator



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THE LEGAL LANDSCAPE






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SESSION OVERVIEW



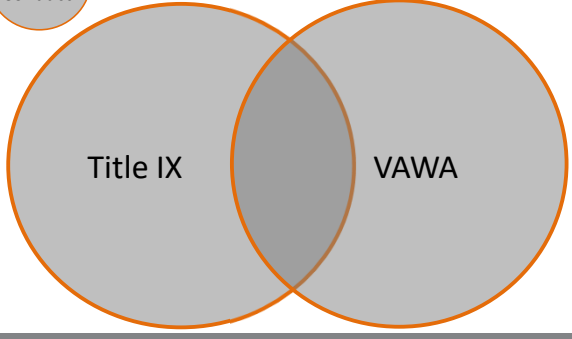
- Title IX
- Clery Act
- Violence Against Women Reauthorization Act
- Defining Sexual Misconduct
- Interaction with Other Laws
- Risks of Non-Compliance
- Training Requirements
- Recordkeeping Requirements




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LEGAL OBLIGATIONS 

Other Conduct




Title IX **VAWA**


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TITLE IX 

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance”





20 U.S.C. § 1681

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WHO MUST COMPLY WITH TITLE IX? 

- Institutions that receive federal funds
 - Students
 - Employees
 - Third Parties
 - Visitors
 - Vendors



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DISCRIMINATION
“ON THE BASIS OF SEX”




- Includes:
 - Sexual harassment
 - Differential treatment




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WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX




- Institution has actual knowledge of
- Sexual harassment
- In an education program or activity of the institution
- Against a person in the United States




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WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX





- Actual knowledge
 - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
 - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
 - Vicarious liability and constructive notice are insufficient
 - Standard not met if the only official with actual knowledge is the respondent

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WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX 


- Actual knowledge (cont.)
 - The following does not qualify an individual as having the authority to institute corrective measures
 - Mere ability or obligation to report sexual harassment
 - Ability or obligation to inform a student about how to report
 - Being trained in how to report


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WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX 

- Education program or activity
 - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - Includes all incidents of sexual harassment occurring on an institution's campus
 - Also includes off-campus conduct if
 - Occurs as part of the institution's "operations"
 - Institution exercised substantial control over the respondent and the context of alleged sexual harassment
 - Occurs at an off-campus building owned or controlled by a student organization officially recognized by the postsecondary institution (e.g., fraternities and sororities)

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HOW INSTITUTIONS MUST RESPOND UNDER TITLE IX 

- Must respond promptly in a manner that is not deliberately indifferent
- Deliberately indifferent = response is clearly unreasonable in light of the known circumstances
- Follow grievance process outlined in the regulations 


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THE LEGAL LANDSCAPE 


- All schools receiving federal funds must:
 - Publish Notice of Nondiscrimination
 - Designate a Title IX Coordinator
 - Disseminate policy prohibiting sex discrimination
 - Adopt and publish fair and equitable grievance procedures
 - Offer supportive measures to a complainant and respondent
 - Follow a legally compliant grievance process
 - Train individuals with heightened responsibilities
 - Train students and employees





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OCR'S ENFORCEMENT AND GUIDANCE 


- OCR's Role:
 - Issue guidance
 - Compliance reviews
 - Resolution agreements





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CLERY ACT 


- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection





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VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA) 


- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual misconduct
- Requires education programs to promote awareness
- Codified parts of 2011 Dear Colleague Letter on Title IX

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DEFINING SEXUAL MISCONDUCT 





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TITLE IX—SEXUAL HARASSMENT 


- Conduct *on the basis of sex* that satisfies one or more of the following:
 - Quid pro quo
 - Hostile environment
 - Sexual assault and VAWA crimes




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TITLE IX—SEXUAL HARASSMENT 


- Quid pro quo:
 - Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
 - Examples
 - Supervisor conditioning promotion on participation in sexual advance
 - Professor conditioning grade on participation in sexual advance




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TITLE IX—SEXUAL HARASSMENT 


- Hostile Environment:
 - Unwelcome conduct (on the basis of sex) determined by a reasonable person to be *so severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the institution's education program or activity




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TITLE IX—SEXUAL HARASSMENT 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
 - Unwelcome sexual flirtations, advances, or propositions
 - Requests for sexual favors
 - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
 - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
 - Visual conduct such as leering or making gestures
 - Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual





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TITLE IX—SEXUAL HARASSMENT 





- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
 - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another’s body
 - Unwelcome verbal or physical conduct against an individual related to the individual’s gender identity or the individual’s conformity or failure to conform to gender stereotypes
 - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
 - Videotaping or taking photographs of a sexual nature without consent


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TITLE IX—SEXUAL HARASSMENT 


- Sexual Assault
- VAWA Crimes
 - Dating violence
 - Domestic violence
 - Stalking
- As defined in Clery
- Consent: No particular definition of consent with respect to sexual assault is required





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TITLE IX—SEXUAL HARASSMENT 


- **VAWA Crimes—Sexual Assault:**
 - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.





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TITLE IX—SEXUAL HARASSMENT 


- **VAWA Crimes—Sexual Assault:**
 - **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.


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TITLE IX—SEXUAL HARASSMENT 





- **VAWA Crimes:**
 - **Domestic Violence:** a felony or misdemeanor crime committed by current/former spouse or intimate partner of the victim under domestic or family violence laws of the jurisdiction **NEW 2022!**
 - **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
 - **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress

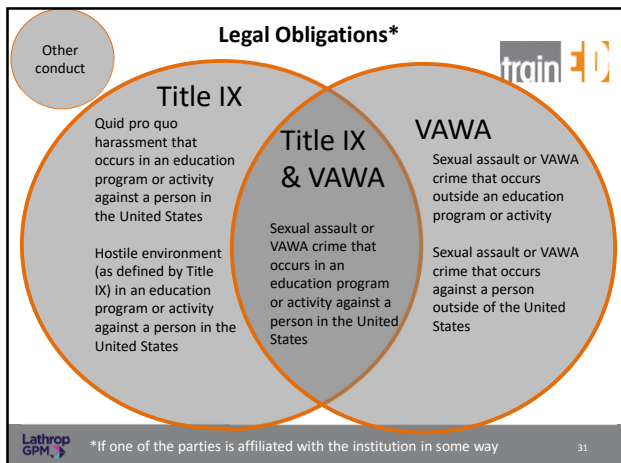
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TITLE IX—SEXUAL HARASSMENT 

- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity



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INTERACTION WITH OTHER LAWS


- FERPA: Family Educational Rights and Privacy Act
 - Limits disclosure of student education records
 - Several exceptions permit disclosure
 - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decision-maker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
 - Required by Title IX
 - Does not include what the remedies are
 - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decision-makers and the final results of the disciplinary proceedings, including all sanctions


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INTERACTION WITH OTHER LAWS


- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
 - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
 - Must report if know or reasonably suspect abuse or neglect of a child
 - Report to police or county department


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RISKS OF NON-COMPLIANCE 





- OCR enforcement
- Clery Act enforcement
- Lawsuits
 - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations

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TRAINING REQUIREMENTS 


- Train Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process on
 - Definition of sexual harassment
 - Scope of the institution's education program or activity
 - How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias
 - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
 - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (effects of trauma) (annually)
 - Institution's policies and procedures

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TRAINING REQUIREMENTS 


- Investigators must also receive training on
 - Issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution's website

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RECORDKEEPING REQUIREMENTS 


- Title IX – for 7 years, must maintain:
 - Investigation and adjudication records
 - Training materials for investigators, decision-makers, coordinators, and persons designated to facilitate informal resolution process
 - Any actions taken (including supportive measures) in response to a report of sexual harassment

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RECORDKEEPING REQUIREMENTS 

- Examples of investigator’s records:
 - Communications with parties and other correspondence relating to investigation (including documentation of verbal in-person/phone conversations)
 - Investigator’s notes
 - Party and witness statements, if applicable
 - Recordings of interviews or interview notes
 - Other evidence received (text messages, pictures, emails, etc.)
 - Investigation report or summary
 - Start and stop dates of investigation suspension
 - Training records – relating to investigators, adjudicators, appeal officers, and other involved officials, as well as training received by parties

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CHANGES TO TITLE IX 

- June 22-23, 2021: Public Notice & Dear Colleague Letter: DOE interprets Title IX to prohibit discrimination based on sexual orientation and gender identity
 - Relying on *Bostock v. Clayton County*
 - July 15, 2022: Federal judge in E.D. Tennessee temporarily blocked enforcement of guidance in 20 states
- July 2021 Q & A
- August 24, 2021: DOE letter regarding regulation provision concerning statements of parties/witnesses who do not submit to cross-examination
- June 23, 2022: Proposed Title IX regulations
 - Open for public comment for 60 days from date of publication in the Federal Register (due 9/12)

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CHANGES TO TITLE IX—CHANGE TO CROSS-EXAMINATION RULE



- If a party or witness does not appear at the hearing, decision-makers can consider other statements made by that individual in the decision-making process
 - Investigation report, text messages, police report, witness reports of statements, etc.
- Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
 - Still may not draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer questions
- Consider allowing parties to use closing argument to share questions advisor would have asked that party or witness and how the individual's testimony would have impacted the outcome
- Likely need to update written policy and procedures

2022 PROPOSED TITLE IX REGULATIONS



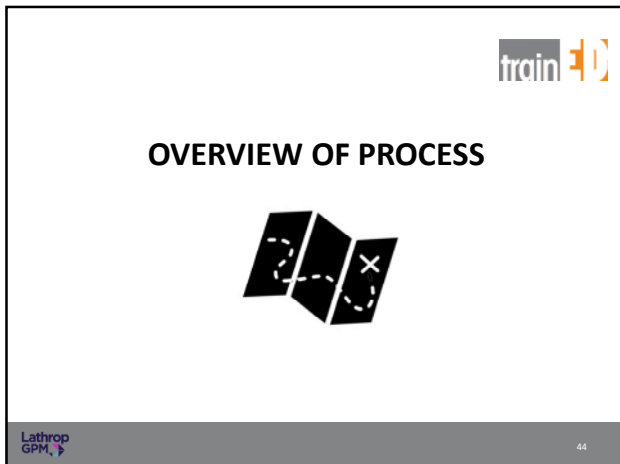
- Sex discrimination includes discrimination based on sex stereotypes, pregnancy, sexual orientation and gender identity
- Broader definition of "Sex-Based Harassment—Hostile Environment"
- Includes off-campus conduct that creates or contributes to hostile environment
- Expands employee reporting requirements

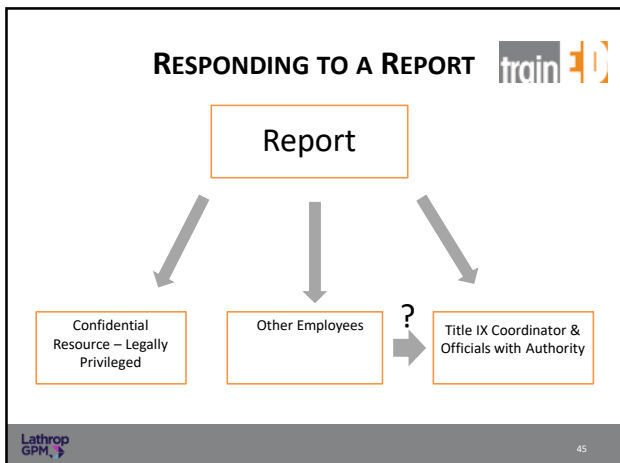
2022 PROPOSED TITLE IX REGULATIONS




- Supportive measures must be offered for any form of sex discrimination
- Procedural requirements for responding to allegations of any type of sex-based discrimination
- Additional procedural requirements for responding to allegations of sex-based harassment involving at least one student
 - Similar to 2020 regulations
 - Hearing not required, must have process for assessing credibility of parties/witnesses that includes the decision-makers asking live questions and for parties to have their questions asked
- Single investigator model is permissible










RESPONDING TO A REPORT 


- Title IX Coordinator can delegate intake duties to others, but:
 - Avoid conflicts
 - Oversee training
 - Determine appropriate process
 - Ensure process is user-friendly
 - Make roles and responsibilities clear
 - Oversee process to ensure compliance and effectiveness





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RESPONDING TO A REPORT 


- Title IX:
 - Institution has actual knowledge of
 - Sexual harassment (as defined by regulations)
 - In an education program or activity of the institution
 - Against a person in the United States
- VAWA:
 - Allegations of sexual assault, domestic violence, dating violence, or stalking
 - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)




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RESPONDING TO A REPORT 


- Response must treat complainant and respondent equitably by
 - Providing written explanation of rights and options to complainants of sexual assault or VAWA crime
 - Offering supportive measures to a complainant (with or without formal complaint)
 - Following a grievance process that complies with the applicable regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent

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RESPONDING TO A REPORT 


- Report vs. Formal Complaint
 - Report
 - Initiates obligation to respond, including offering supportive measures (see next slide for more details)
 - Complainant's identity may be kept confidential from respondent
 - Formal complaint
 - Initiates grievance process
 - Cannot be filed anonymously
 - Requires complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
 - Title IX Coordinator can sign a complaint
 - Grievance process requires that complainant's identity be disclosed to respondent, if known


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RESPONDING TO A REPORT 


- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
 - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
 - Consider complainant's wishes with respect to supportive/interim measures
 - Explain the process for filing a formal complaint
 - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
 - Provide complainant with written notice of rights (VAWA)





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RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES 


- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures




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RESPONDING TO A REPORT – SUPPORTIVE/INTERIM MEASURES 

- Examples
 - Mutual restrictions on contact between the parties
 - Change academic or extracurricular activities, living, transportation, dining, and working situations
 - Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible




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RESPONDING TO A REPORT 


- Other obligations:
 - Notify campus security, if necessary
 - Clery report, if necessary



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RESPONDING TO A FORMAL COMPLAINT 

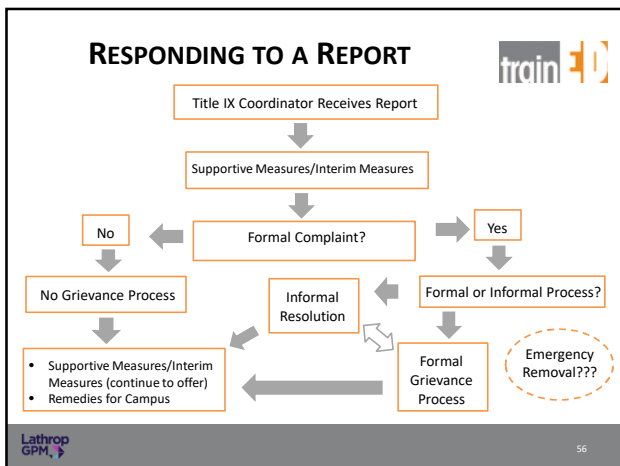
- Formal complaint
 - VAWA: No specific requirements
 - Title IX:
 - Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment
 - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
 - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and must comply with the requirements to be free from conflicts and bias

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INFORMAL RESOLUTION


- VAWA: No specific requirements
- Title IX:
 - Any time prior to determination, may facilitate informal resolution process, such as mediation, if
 - Provide parties' detailed written notice
 - Obtain parties' voluntary written consent to informal process
 - May not offer informal resolution unless a formal complaint is filed
 - May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student


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RESPONDING TO A FORMAL COMPLAINT – SUPPORTIVE/INTERIM MEASURES


- Review support/interim measures available during an investigation
 - Periodically update both parties on status of investigation
 - No contact orders
 - Available to both parties
 - Designed to restore or preserve equal access to education program or activity without unreasonably burdening the other party
 - All others mentioned earlier





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FORMAL GRIEVANCE PROCESS 


- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and any hearing or decision-making process the school uses to determine:
 - Whether or not the conduct occurred using
 - Preponderance of the evidence standard (“more likely than not”) or
 - Clear and convincing evidence standard (“highly probable”); and
 - If the conduct occurred, what actions the school will take to eliminate the hostile environment, prevent its recurrence, and remedy its effects, which may include:
 - Imposing sanctions on the respondent;
 - Providing remedies for the complainant; and
 - Addressing the campus community




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FORMAL GRIEVANCE PROCESS 

- Must treat complainants and respondents equitably by
 - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
 - Remedies must be designed to restore or preserve equal access to the institution’s education program or activity
 - May include the same individualized services as “supportive measures”
 - Do not need to be “non-disciplinary” or “non-punitive” and do not need to avoid burdening the respondent
 - Following grievance process that complies with applicable regulations before imposing disciplinary sanctions or other actions that are not supportive measures

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FORMAL GRIEVANCE PROCESS 

- Objective evaluation of all relevant evidence
 - Inculpatory and exculpatory evidence
 - Credibility determinations may not be based on status as complainant, respondent, or witness
- No conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process
 - For or against complainants or respondents generally
 - For or against an individual complainant or respondent
- Presumption of non-responsibility

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FORMAL GRIEVANCE PROCESS: DUAL ROLES UNDER TITLE IX



- Title IX requires independent decision-maker
 - Title IX Coordinator and decision-maker must be different individuals
 - Investigator and decision-maker must be different individuals
 - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

FORMAL GRIEVANCE PROCESS— EQUAL RIGHTS FOR THE PARTIES



- Interview/hear from both parties
- Equal opportunity for parties
 - Identify/present fact witnesses and evidence, including inculpatory and exculpatory evidence
 - Access to evidence (if any) (Title IX and VAWA)
 - Must allow access for sexual assault/VAWA
 - Must send *hard copy or electronic format* for Title IX
 - Right to an advisor (may be attorney) (Title IX and VAWA)
 - May limit extent of participation (must apply equally)
 - If party has no advisor, school will provide for cross-examination
 - Participate in pre-hearing meeting (if any)
 - Identify/present character or expert witnesses (if any)
 - Written notice of
 - Meetings
 - Allegations
 - Informal Complaint Process
 - Written simultaneous notices of outcome



FORMAL GRIEVANCE PROCESS— OTHER REQUIREMENTS



- Burden of proof and gathering evidence is on the institution, not on the parties
- May not restrict ability of either party to discuss the allegations or to gather and present relevant evidence
- Allow advisor of choice

FORMAL GRIEVANCE PROCESS — ADVISORS



- Parties have a right to an advisor of their choice
- May be, but not required to be, an attorney
- Advisors have right to receive copies all directly related evidence (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide if none (Title IX only)
 - Limited role
- May otherwise limit extent of advisor’s participation in the process (must apply equally)

FORMAL GRIEVANCE PROCESS — TIMEFRAMES



- Reasonably prompt timeframes
 - Including timeframes for filing and resolving appeals and informal resolution processes
 - Temporary delay or extension of timeframes for good cause, which may include
 - Absence of parties, a party’s advisor, or witnesses
 - Concurrent law enforcement activity
 - Need for language assistance or accommodations of disability
 - Must provide written notice to parties of the delay or extension and the reason for it
 - DOE guidance: also include anticipated length of delay
- Some timeframes are set by the regulations (Title IX)



FORMAL GRIEVANCE PROCESS — CRIMINAL PROCESS



- Separate from criminal investigation
- May not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- May temporarily delay for initial police investigation
 - Prior guidance said police evidence-gathering stage typically takes 7-10 days
 - Must resume when notified that police are done gathering evidence
- May not delay for criminal prosecution



FORMAL GRIEVANCE PROCESS



- Policy must:
 - Describe range of possible sanctions and remedies or list the possible sanctions and remedies
 - Describe range of supportive measures available to both parties
 - Describe appeal bases and procedures

FORMAL GRIEVANCE PROCESS




- Privileged information
 - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
 - Institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so

FORMAL GRIEVANCE PROCESS




- Any provisions, rules, or practices other than those required by the regulations that an institution adopts as part of its grievance process must apply equally to both parties



FORMAL GRIEVANCE PROCESS —
DISMISSAL OF FORMAL COMPLAINT 

- **Mandatory dismissal under Title IX**
 - Must dismiss formal complaint if alleged conduct
 - even if proved, would not constitute sexual harassment
 - did not occur in the institution's education program or activity or
 - did not occur against a person in the United States
 - Such dismissal does not preclude action under another provision of institution's code of conduct
- **Discretionary dismissal under Title IX**
 - May dismiss formal complaint if at any time during the investigation or hearing
 - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations, therein
 - respondent is no longer enrolled or employed by the recipient or
 - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

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FORMAL GRIEVANCE PROCESS —
CONSOLIDATION OF FORMAL COMPLAINTS 

- **Title IX:** An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the *allegations of sexual harassment arise out of the same facts or circumstances*
- **VAWA:** No specific guidance

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Q & A 


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WORKING WITH THE PARTIES




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CASE STUDY


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When assessing the credibility of the complainant, which of the following might cause you to find the complainant less credible:

1. Complainant doesn't want you to interview any of complainant's friends.
2. Complainant tells you that they are meeting with a counselor.
3. Complainant shows no emotion when talking about the alleged sexual assault.
4. Complainant did not report to law enforcement.


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CASE STUDY

train 


When assessing the credibility of the respondent, which of the following might cause you to find the respondent less credible:


1. Respondent provides short, careful answers to all your questions.
2. Respondent tells you that respondent has text messages between respondent and the complainant, but later says that they must have been deleted somehow.
3. Respondent is very angry at complainant for bringing the complaint and calls complainant a liar.
4. Respondent has an attorney advisor.

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SESSION OVERVIEW


- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- How to serve impartially
 - Working with Complainant
 - Working with Respondent



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RAPE MYTHS


Myth	Reality
Rape is primarily sexually motivated	Rape combines elements of power, anger and sexuality
Rapists are usually strangers	Most perpetrators are known to the victim
The victim did something to cause the rape	No behavior warrants being raped; under no circumstances can the victim be blamed
Acquaintance rape is not as traumatic	There are no differences in victim psychological symptoms between acquaintance and stranger rape


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SECONDARY VICTIMIZATION


- Secondary victimization:
 - The attitudes, beliefs, and behaviors that victims experience as victim blaming and insensitive
 - It exacerbates their trauma, and it makes them feel like what they're experiencing is a second rape — hence the term “secondary victimization”





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SECONDARY VICTIMIZATION 


- Examples of behaviors:
 - Discouraging the victim from making the report
 - Telling victim it's not serious enough to pursue
 - Asking about dress, behavior, or what they might have done to provoke the assault
- Psychological impact on victims:
 - Blamed
 - Depressed
 - Anxious
 - Violated
 - Reluctant to seek help





Lathrop GPM,  79

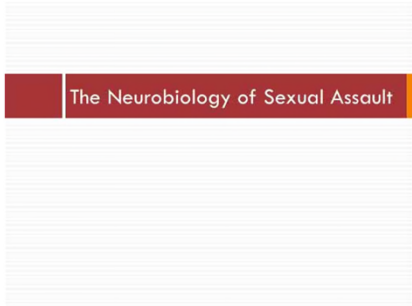
COMMON VICTIM RESPONSES 


- Initial denial of incident
- No reporting/delayed reporting
- Maintaining contact with perpetrator
- Fight, flight, or freeze




Lathrop GPM,  80

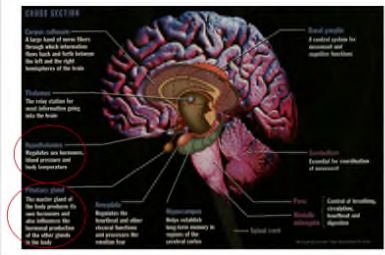
NEUROBIOLOGY OF SEXUAL ASSAULT 



Lathrop GPM,  81

NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



Corpus callosum
A large band of nerve fibers (axons) which interconnects the two sides of the brain. It is the main pathway for the transfer of information between the two hemispheres of the brain.

Hypothalamus
The primary stimulus for most endocrine glands lies in the brain.


Amygdala
Responsible for emotions. Hypothalamic hormones, which are secreted into the bloodstream, can affect the amygdala.


Pituitary gland
The anterior part of the brain produces the hormones that regulate the growth and development of the rest of the body.

Pineal gland
A small gland located in the brain, behind the hypothalamus. It produces and secretes the hormone melatonin, which regulates the body's circadian rhythm.

Hypothalamus
Essential for the production of hormones.

Pituitary gland
Control of breathing, circulation, blood sugar, and metabolism.

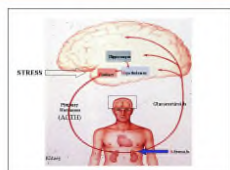
Lathrop GPM,  82

NEUROBIOLOGY OF SEXUAL ASSAULT 


Brain-Body Regions Impacted by Trauma


HPA Axis

Balances body following stress by releasing of various hormones/chemicals



SOURCE: Southwick et al., 2005

Lathrop GPM,  83

NEUROBIOLOGY OF SEXUAL ASSAULT 

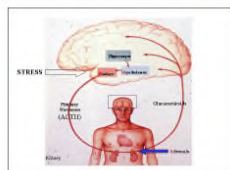
Brain-Body Regions Impacted by Trauma

Catecholamines: Fight or flight response


Cortisol: Energy available


Opioids: Prevent pain

Oxytocin: Promotes good feelings




SOURCE: Southwick et al., 2005

Lathrop GPM,  84


NEUROBIOLOGY OF SEXUAL ASSAULT 


What Happens During A Sexual Assault



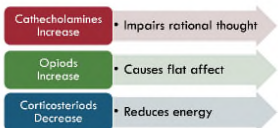
```
graph LR; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood];
```

SOURCE: Banks, 2002, Southwick et al., 2003

Lathrop GPM,  88


NEUROBIOLOGY OF SEXUAL ASSAULT 


What Happens During A Sexual Assault



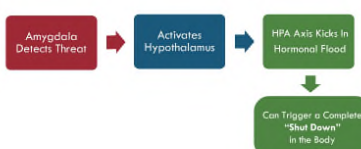
Catecholamines Increase	• Impairs rational thought
Opioids Increase	• Causes flat affect
Corticosteroids Decrease	• Reduces energy

SOURCE: Banks, 2002, Southwick et al., 2003

Lathrop GPM,  89


NEUROBIOLOGY OF SEXUAL ASSAULT 

What Happens During A Sexual Assault



```
graph TD; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood]; C --> D[Can Trigger a Complete "Shut Down" in the Body];
```

SOURCE: Banks, 2002, Southwick et al., 2003


Lathrop GPM,  90

NEUROBIOLOGY OF SEXUAL ASSAULT


Tonic Immobility (TI)

- AKA: "Rape-induced paralysis"
- Autonomic (uncontrollable) mammalian response in extremely fearful situations
- Increased breathing, eye closure, paralysis
- 12-50% rape victims experience TI during assault
- TI is ~more common in victims who have been assaulted before (childhood, adolescence, or adult)


SOURCE: Foa et al., 2007; Gallaro et al., 1993; Heldt et al., 2005

Lathrop GPM,  91

COMMON BEHAVIORS DURING ASSAULT





- Impaired rational thought
- Flat affect
- Reduced energy
- Flight
- Fight
- Freeze

Lathrop GPM,  92


MEMORY

What Happens During A Sexual Assault



Lathrop GPM,  93

MEMORY



What Happens During A Sexual Assault

Increased Stress
Hormones

➔

Impaired
Functioning in
Hippocampus

➔

Memories
Fragmented

Memory Recall Can Be
Slow & Difficult

↓


Events of the Assault CAN
Be Recalled Accurately

BUT . . .
Alcohol use during the assault may prevent encoding, which means there's nothing to retrieve

SOURCE: Koss et al., 1995, 1996; Ruzendal et al., 2009; Rubin et al., 2008

Lathrop
GPM, >
94

MEMORY




Case Study: Memory Fragmentation

- 25 year-old woman
- Raped by a friend's brother at 4th July party
- Filed police report
- Detective interview was when it all went to hell

"He wouldn't let up, pounding me with question after question after question. Trying to trick me, trying to get me to mess up. I wanted to say, 'hold on, give me a minute to think'. No, he kept coming at me."

Lathrop
GPM, >
95

MEMORY




Case Study: Memory Fragmentation

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Lathrop
GPM, >
96


MEMORY 


Case Study: Memory Fragmentation

"We talked it through. And I didn't feel rattled and freaked out. I'm sure I was incoherent and he just let it roll. He was patient.

I felt like I was piecing it together, like a puzzle, we were putting together a puzzle together.

And drinking coffee."

Lathrop GPM,  97

MEMORY 


Case Study: Memory Fragmentation


I: So, why did you do that? (give her the coffee)


R: It helps. Not the coffee so much, just the moment to let it all come together in their heads.

I: What do you mean?

R: I don't know why it's like that, I've just noticed that over the years, if you give them a few minutes to breathe it starts to make more sense. I don't know why, it just does.

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION


Lathrop GPM,  98


MEMORY 


Case Study: Memory Fragmentation


I: Were you worried that if you gave her some time, she'd just make something up?

R: Nah, not really. I mean, some victims lie, but most don't. Besides, if they're lying, we'll catch 'em at it eventually. I think it's just hard for victims to talk about and we just need to have a little patience.


 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION


Lathrop GPM,  99

IMPACT OF TRAUMA ON MEMORY 





- Memories accurately stored
- Memory recall slow
- Fragmented account
- Concentration difficult
- Alcohol exception—may impact storage and accuracy of memories

Lathrop GPM,  100


SENSORY DETAILS 


- Victims of trauma may be able to recount vivid sensory details, including certain things the victim saw, heard, or smelled during the assault
- These details could provide more information about the incident and may help clarify the victim's memory
- Use open-ended questions
 - What can you recall about what happened?
- May also use sensory-based questions
 - What did you see?
 - What did you hear?
 - What did you smell?
 - What did you taste?
 - What did you touch?

Lathrop GPM,  101

IMPACT OF CULTURE 

- Cultural background is one of many factors that may impact the way that complainant, respondent, and witnesses react to the incident and present during the investigation interviews
- Different cultural backgrounds will influence individuals in different ways
- Be aware of and sensitive to possible cultural influences
- Incorporate training as appropriate



Lathrop GPM,  102

TRAUMA-INFORMED APPROACH GONE WRONG



- University of Mississippi lawsuit based in part on its training materials
 - Victims sometimes withhold facts and lie about details
 - Victims lie about anything that casts doubt on their account of the event
 - When complainants withhold exculpatory details or lie to an investigator or the hearing panel, the lies should be considered a side effect of an assault
- A trauma-informed approach should not unfairly favor the complainant or prejudice the decision-maker against the respondent



TAKE AWAY




- Do not automatically draw negative inference based on a behavior that may be a response to trauma
- If an individual exhibits behaviors associated with trauma, it does not automatically mean that individual experienced trauma
- A response consistent or inconsistent with a typical trauma response should not in and of itself be outcome determinative


SERVING IMPARTIALLY





- Avoid prejudgment of the facts at issue
- Avoid conflicts of interest
- Avoid bias
- Avoid appearing to agree with either party's account

SERVING IMPARTIALLY 


- Set boundaries
 - Make objective role clear up front
 - Not counseling
 - Differentiate from your other roles within institution
 - Know how to respond when coming close to line
 - Point to resources on campus





Lathrop GPM,  106

SERVING IMPARTIALLY 


- Separate support/advocacy services from investigation/adjudication process
- Conflation of roles can:
 - Impact thorough assessment of the facts
 - Create distrust/confusion by complainant
 - Give appearance of bias/lack of impartiality





Lathrop GPM,  107

SERVING IMPARTIALLY — WORKING WITH COMPLAINANT 

- Slow down
- Make him/her feel comfortable
- Consider timing and locations
- Allow sufficient time for thorough exploration of the issues
- Develop rapport and allow for closure
- Explain process
- Remind the complainant of the ability to ask questions and present information during the entire process




Lathrop GPM,  108


SERVING IMPARTIALLY — WORKING WITH COMPLAINANT 

- Recognize the impact of trauma on memory
 - Allow the complainant to give a narrative
 - Use open-ended free recall questions
 - Build in an opportunity for follow-up
 - Allow a written narrative if that is more comfortable
- Memory may be impaired by alcohol
- Use “account” or “experience” rather than “story”
- Allow advisor to be present
- Avoid secondary victimization
- Be transparent about how information will be used


Lathrop GPM, ▶ 109


SERVING IMPARTIALLY — WORKING WITH RESPONDENT 

- Recognize stress involved with being accused of sexual misconduct
 - He/she may be defensive
 - He/she may be nervous or uncomfortable
- Explain fair and equitable process
- Do not appear to take sides
- Use impartial language
- Afford same opportunity to provide narrative of experience, to provide physical or other evidence, etc.
- Memory may be impaired by alcohol



Lathrop GPM, ▶ 110


SERVING IMPARTIALLY — WORKING WITH RESPONDENT 



- Remind the respondent of the ability to ask questions and present information during the entire process
- Ensure the respondent is fully aware of the process and prohibition against retaliation
- Be transparent about how information will be used
- Allow advisor to be present


Lathrop GPM, ▶ 111

COMMUNICATION 




- Identify contact person who will coordinate with multiple departments/people on complainant's/respondent's behalf
- Ensure regular and timely communications to both parties regarding: next steps, expectations, timing, and delays
- Ensure that parties have notice of all meetings
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members

Lathrop GPM,  112

SOURCES OF INFORMATION 

- NIJ Presentation by Rebecca Campbell
- trainED gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, and National Institute of Justice for allowing us to reproduce, in part or in whole, the recording of The Neurobiology of Sexual Assault. The opinions, findings, and conclusions or recommendations expressed in this recording are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Lathrop GPM,  113



Q & A



Lathrop GPM, 




STAGES OF INVESTIGATION



Lathrop GPM, >115


OBLIGATIONS OF THE INSTITUTION UPON RECEIVING REPORT




- Assess immediate safety and well-being for individual and campus
 - Consider whether emergency removal is necessary
- Notify complainant of right to contact law enforcement (or not to) and seek medical treatment; offer institution's assistance
- Enter into crime log, assess for timely warning
- Offer/provide supportive/interim measures
- Provide written notice of rights to complainant (VAWA)
- Notify complainant of importance of preserving evidence (VAWA)

Lathrop GPM, >116


PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION




- Upon formal complaint, provide written notice to known parties, including:
 - Notice of grievance process, including any informal resolution process
 - Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare response before initial interview
 - Identities of the parties involved, if known
 - Conduct allegedly constituting sexual harassment
 - Date and location of the alleged incident, if known







Lathrop GPM, >117


PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 


- Upon formal complaint, provide written notice to both parties, including:
 - Statements that:
 - Respondent is presumed not responsible
 - Determination of responsibility is made at conclusion of grievance process
 - Right to advisor of choice who may be but is not required to be an attorney
 - Parties may inspect and review evidence *as permitted in sexual misconduct policy*
 - Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
- Provide notice of *additional* allegations about the complainant or respondent that arise during process


Lathrop GPM,  118


PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 

- Determine whether parties have advisors 
- Require advisors to sign advisor agreement (optional) 
- Consider whether informal resolution is appropriate 


Lathrop GPM,  119

ROLE OF INVESTIGATOR 


- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for decision-makers and parties
- Credibility and/or make recommendations? 
 - Can offer recommendations regarding responsibility but ultimate determination must be made by separate adjudicator (Title IX)
- Role does not include:
 - Adjudication of complaint
 - Providing support or advocacy to either party
 - Serving as a confidential resource

Lathrop GPM,  120

DIFFERENCES BETWEEN CRIMINAL AND INSTITUTIONAL INVESTIGATIONS




- Different standards of proof
 - Probable cause vs. beyond reasonable doubt vs. preponderance of evidence vs. clear and convincing
- Different investigation “powers”
 - Subpoena powers vs. disciplinary actions
- Timing of processes
- Cooperating with law enforcement
 - Memorandum of Understanding
 - Use of police report




Lathrop GPM, > 121

STAGES OF INVESTIGATION




- **Stage One:** Review complaint and outline investigation
- **Stage Two:** Gather evidence
- **Stage Three:** Review / Draft / Conduct additional interviews
- **Stage Four:** Make evidence available to parties (Title IX only)
- **Stage Five:** Package investigation for decision-maker(s)




Lathrop GPM, > 122


STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION




- Review formal complaint
- Review notice provided to parties
 - Alert Title IX Coordinator if there are additional allegations
- Review institution’s policy and how it defines relevant terms
- Identify all known witnesses and gather information about them
- Begin to create chronology of events
- Strategize about the timing and location of interviews





Lathrop GPM, > 123

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 


- Prepare script of opening remarks
 - Explain your role in the grievance/complaint process
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of party's/witness's statements
 - If applicable, explain cross-examination
 - If applicable, inform party/witness of recording and its use
 - Advise party and advisor on advisor's limited role
 - Explain the need to ask difficult, detailed questions
 - Ask party/witness not to read into questions
 - Tell party/witness he or she can ask for a break during the interview




Lathrop GPM,  124


STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of opening remarks (cont.)
 - Explain that timelines and order of events may not be clear
 - Tell the party/witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct *witness* regarding confidentiality (gag orders on parties is not permissible)
 - Assure/warn party/witness regarding policy prohibiting retaliation
 - If applicable, advise party/witness on alcohol or other policy waiver
 - If video/phone interview, confirm no one else is in the room
 - Obtain commitment to tell the truth

Lathrop GPM,  125

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of closing remarks
 - Ask if there is anything else the party/witness wants you to know
 - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
 - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
 - Find out what information those witnesses/evidence/questions will provide
 - Give witnesses opportunity to suggest other witnesses and evidence
 - Find out what information those witnesses/evidence will provide
 - Remind party/witness regarding need to preserve evidence

Lathrop GPM,  126

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION



- Prepare script of closing remarks (cont.)
 - If applicable, explain that an additional interview may be necessary at a later date
 - Advise that party/witness may reach out to you with additional information
 - Reminder regarding policy prohibiting retaliation
 - Remind *witness* of instructions regarding confidentiality
 - Must not restrict the ability of either party to discuss the allegations under investigation
 - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator or Deputy Coordinator

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION




- Identify ultimate questions that will need to be decided
- Develop checklist for key questions—examples:
 - Elements of each potential violation
 - Consent to each act
 - Impact of alcohol
 - Ask for written communications—texts, emails, etc.
- Create list of topics for witness interviews (not questions)
- Avoid investigative techniques and approaches that apply sex stereotypes or generalizations


STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION



- Gather and review available evidence
- Know the setting(s) of the events
- Determine whether witness interviews will be recorded
- Stay flexible



STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 




- Prepare for parties with advisors
 - Consider having advisors review and sign document outlining purpose and role of advisor
- Also be prepared for how to handle “private” investigations by the parties

Lathrop GPM, >

CASE STUDY  


Lathrop GPM, > 131

CASE STUDY 

- On March 21, 2022, Hailey Hanson made a complaint of sexual misconduct against Jeff Jeffries.

Lathrop GPM, > 132

CASE STUDY




COMPLAINANT NAME: Hailey Hanson
ADDRESS: 1234 Off-Campus Drive
DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 19, 2022
RESPONDENT NAME: Jeff Jeffries
ADDRESS: 999 Dorm Room Lane

ALLEGATIONS: I met Jeff Jeffries in the fall through the Nordic Skiing Club. We were friends and hung out a few times in January and February. We kissed once or twice before and everything was fine. But on February 19, Jeff took things too far. We were watching a show in my dorm room and we started kissing. A little while later, Jeff put his hand up my shirt and touched my boob without asking. I was not okay with him touching me there.


After that night, I tried to avoid Jeff, but he wouldn't leave me alone. He kept trying to see me and snap me. He even started showing up places that he knew I would be. He came to my friend's party and my poetry reading. He's stalking me on social media. He even left a creepy note on my car. I'm really scared and I need him to leave me alone.

I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.

X Hailey Hanson

Lathrop GPM,  133


CASE STUDY




Excerpt from Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:


- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

Lathrop GPM,  134


**CASE STUDY –
DEFINITION OF SEXUAL ASSAULT**




Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person's consent. Sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

Lathrop GPM,  135


**CASE STUDY –
DEFINITION OF CONSENT**



Consent means words or overt actions by a person in advance clearly and affirmatively communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.


Lathrop GPM,  136

**CASE STUDY –
DEFINITION OF CONSENT**




The definition of consent is subject to the following:


- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- An individual known to be – or who should be known to be – **incapacitated**, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM,  137


**CASE STUDY –
DEFINITION OF STALKING**




- Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.
 - **Course of conduct** means two or more acts, including but not limited to, acts which the stalker directly, indirectly, or through others, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person’s property.
 - For purposes of this definition, not all communication about a person will be considered to be directed at that person.
 - **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.
 - **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

Lathrop GPM,  138


**CASE STUDY –
DEFINITION OF STALKING**




- Stalking behavior includes, but is not limited to:
 - Repeated, unwanted, and intrusive communications by phone, mail, email, texting, and/or other electronic communications, including social media;
 - Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
 - Following or lying in wait for the victim at places such as home, school, work, or recreational facilities;
 - Making direct or indirect threats to harm the victim, or the victim’s children, relatives, friends, or pets;
 - Damaging or threatening to damage the victim’s property;
 - Repeatedly posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth, that would cause a person to feel threatened or intimidated.


Lathrop GPM,  139

STAGE TWO: GATHER EVIDENCE




- Types of evidence:
 - Witness interviews
 - Physical evidence
 - Text messages/emails/photos
 - Social media
 - Police report
 - Medical examination – *Caution!*
 - Student/personnel records
 - Surveillance video




Lathrop GPM,  140

**STATE TWO: GATHER EVIDENCE –
NOTICE OF MEETINGS**




- Title IX: Written notice to the party whose participation is invited or expected of the
 - Date
 - Time
 - Location
 - Participants
 - Purpose



of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate

- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process

Lathrop GPM,  141

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES



- Go through script of opening remarks
 - Explain your role in the grievance/complaint process
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of party’s/witness’s statements
 - If applicable, explain cross-examination
 - If applicable, inform party/witness of recording and its use
 - Advise party and advisor on advisor’s limited role
 - Explain the need to ask difficult, detailed questions
 - Ask party/witness not to read into questions
 - Tell party/witness he or she can ask for a break during the interview



STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES




- Go through script of opening remarks (cont.)
 - Explain that timelines and order of events may not be clear
 - Tell the party/witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct *witness* regarding confidentiality (gag orders on parties is not permissible)
 - Assure/warn party/witness regarding policy prohibiting retaliation
 - If applicable, advise party/witness on alcohol or other policy waiver
 - If video/phone interview, confirm no one else is in the room
 - Obtain commitment to tell the truth

STAGE TWO: GATHER EVIDENCE – INITIAL PARTY INTERVIEWS




- Purpose is to provide each party with an opportunity to share their account
- Do not ask party to respond to or rebut other party’s or witness’s accounts
- Ask limited follow-up questions to clarify party’s own account
- When in doubt, don’t ask


STAGE TWO: GATHER EVIDENCE – WITNESS INTERVIEWS 

- “Do you know why you were asked to come speak with me today?”
 - “Highway” or “Scenic Route” interview?
- If Scenic Route, use “funnel” approach
- If Highway interview, download everything they “know” about relevant events


Lathrop GPM, ▶ 145

STAGE TWO: GATHER EVIDENCE – WITNESS INTERVIEWS 




- Scenic Route: Funnel Approach
 - Start broadly; avoid leading questions
 - “I understand you were at a party off-campus last Saturday; did anything unusual happen while you were there?”
 - “You take Professor Johnson’s architectural drafting course on Wednesday afternoons; did you observe anything out of the ordinary last week?”
 - Decide whether to ask more detailed questions
 - More reliable responses and less rumor mill




Lathrop GPM, ▶ 146

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 


- Create chronology of events
- Identify the who, what, where, when, and how
 - If don’t know names, figure out other identifiable information
 - If helpful, consider drawing a map/diagram
 - If exact times aren’t known, what events were going on to help fix a time
 - Avoid “why” questions
- Close “chapters” by recapping events
- Distinguish between personal knowledge and hearsay


Lathrop GPM, ▶ 147

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 


- Ask about evidence (text messages, photos, emails)
 - Expect that the parties and witnesses may be talking to each other during the complaint process—ask for these communications later in the process
 - Ask witnesses to forward information immediately
- Don't share information unless necessary
- Don't focus on writing exhaustive notes
- Let witness do most talking (“What happened next?”)




Lathrop GPM, > 148

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Don't avoid questions because answers seem too obvious or too personal
- Don't inquire into complainant's prior sexual history with anyone other than respondent
 - Unless respondent alleges someone else committed the conduct
- Do not ask or initiate discussion about privileged information, unless individual holding the privilege has waived it (e.g., doctor-patient privilege, attorney-client privilege)
- Do not ask for or otherwise access treatment records without the party's written consent
- Prepare a summary/draft report immediately following interview



Lathrop GPM, > 149

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Go through script of closing remarks
 - Ask if there is anything else the party/witness wants you to know
 - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
 - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
 - Find out what information those witnesses/evidence/questions will provide
 - Give witnesses opportunity to suggest other witnesses and evidence
 - Find out what information those witnesses/evidence will provide
 - Remind party/witness regarding need to preserve evidence

Lathrop GPM, > 150

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES



- Go through script of closing remarks (cont.)
 - If applicable, explain that an additional interview may be necessary at a later date
 - Advise that party/witness may reach out to you with additional information
 - Reminder regarding policy prohibiting retaliation
 - Remind *witness* of instructions regarding confidentiality
 - Must not restrict the ability of either party to discuss the allegations under investigation
 - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator or Deputy Coordinator

CASE STUDY




Ask questions of Hailey

CASE STUDY




- During the interview, Hailey tells you that the culture in athletics at the institution is “so sexist” and “a terrible environment for women.”
- What do you do with this statement?


CASE STUDY




- During her initial interview, Hailey raised multiple incidents of alleged conduct by Jeff that were not in her complaint or the Notice of Allegations.
- What do you do after the interview?

Lathrop GPM,  154


CASE STUDY



- You send the information about the potential allegations to the Title IX Coordinator. The Title IX Coordinator determines that the new allegations, if true, potentially contribute to Hailey’s stalking allegation. The Title IX Coordinator meets with Hailey, and Hailey chooses to add the allegations to her complaint. The Title IX Coordinator issues an amended Notice of Allegations.

Lathrop GPM,  155


CASE STUDY




Excerpt from Amended Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - On February 24, 2022, at an unknown outdoor location on campus, Jeff communicated to Hailey via a third party.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 15, 2022, Jeff communicated about Hailey via electronic communication.
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

Lathrop GPM,  156

CASE STUDY 

- You send an email to Jeff asking to schedule an interview. You let him know that in light of the amended Notice of Allegations he just received, you can schedule the interview for the next week so that he has sufficient time to prepare.
- Once you set a time for the interview, what information do you need to include in your email to Jeff?
- You update the Title IX Coordinator.


Lathrop GPM, > 157

CASE STUDY 



Ask questions of Jeff

Lathrop GPM, > 158

CASE STUDY 

- In response to a few of your questions, Jeff states, "I am not comfortable answering that question."
- How do you respond?

Lathrop GPM, > 159

CASE STUDY



- After Jeff’s initial interview, you receive an email from an attorney, who informs you that he is Jeff’s attorney and advisor in the complaint process. He tells you that Jeff has been wrongly accused and mistreated by the institution. He demands that Hailey be investigated for lying. He tells you that “these false allegations have significantly impacted Jeff’s life and his family.” He also demands that Jeff’s initial interview be redone since he (the attorney) wasn’t present for it.
- How do you respond?

CASE STUDY



- A few days later you receive an email from Jeff. He says since his advisor wasn’t at his initial interview, he would like you to send him a copy of the recording of the interview.
- How do you respond?

STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES – ADVISORS



- VAWA requires:
 - Proceeding must “provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the **opportunity to be accompanied to any related meeting** or proceeding by the advisor of their choice”
- Title IX requires:
 - Allow advisor of choice, who may be but is not required to be an attorney
 - May establish equal restrictions on advisors’ participation



STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES – ADVISORS



- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
 - Signed advisor agreements
 - Be prepared to enforce the agreement parameters
 - Set the ground rules at the outset (e.g., “potted plant”)
 - Don’t engage with the advisor; only address the party (even in response to the advisor’s statements)
 - Hold the party responsible for the advisor’s actions
 - Don’t be afraid to consider pausing the process if the advisor continues to be disruptive
 - Be consistent

STAGE THREE: REVIEW/DRAFT/ CONDUCT ADDITIONAL INTERVIEWS




- Draft report
- Assess what more needs to be done
- Determine whether additional witnesses are necessary or merely duplicative
- Determine whether new facts/allegations require additional interviews
- Inform Title IX Coordinator of any new allegations (related or unrelated)
- Determine whether notice to the parties needs to be amended
- Be sure that each party has adequate notice of the other party’s allegations
- Inform parties in advance of close of evidence date




CASE STUDY




- One of the allegations in the complaint took place during a poetry reading event on campus.
- What information might you be able to gather about this incident?


CASE STUDY 


- During his initial interview, Jeff suggests that you interview Hailey’s ex-boyfriend, whom he says will tell you all about how she made up all kinds of lies about him after they broke up.
- Do you interview the ex-boyfriend?

Lathrop GPM,  166


CASE STUDY 


- What if Jeff says that Hailey’s ex-boyfriend will explain how she is a pathological liar?

Lathrop GPM,  167

CASE STUDY 


- Jeff said during his initial interview that he attended the poetry reading with his friends Tyler and Matt. You ask for Tyler and Matt’s contact information so that you can interview them. Jeff gives you the information.
- You schedule an interview with Tyler, but after several attempts at contacting Matt, you have not received a response.
- What do you do?

Lathrop GPM,  168

CASE STUDY 


- When asked about other potential witnesses during his initial interview, Jeff told you everyone in the Nordic Skiing Club could testify to Jeff and Hailey’s interactions and to their characters.
- Who do you interview?

Lathrop GPM, ▶ 169

**STAGE THREE: REVIEW/DRAFT/
CONDUCT ADDITIONAL INTERVIEWS** 

- Purpose of follow-up interviews with the parties
 - Gather any missing information from each party’s account
 - Provide each party an opportunity to respond to the other party’s factual account, including any specific allegations and defenses to those allegations
- Preparing for follow-up interviews with the parties
 - Complete draft report prior to conducting follow-up interviews
 - Identify gaps in each party’s account
 - Ensure that the accounts have addressed each allegation of a policy violation (including all elements of alleged policy violations)
 - Identify differences between the parties’ accounts and between each party’s account and witness accounts
 - Outline questions for follow-up interviews

Lathrop GPM, ▶ 170

CASE STUDY 

- During his initial interview, when asked about Hailey’s demeanor during the poetry reading, Jeff stated, “Normal. Fine. I mean, she seemed happy, did a good job at the reading. Yeah, that’s it, I guess. I mean, you can ask anyone who was there. She was fine.”
- Jeff gave you the names of two of his friends who were at the event with him, but you were only able to interview one of them, who doesn’t remember much of the event.
- During Hailey’s follow-up interview, you ask her who else was at the event. Hailey tells you that the only people she knew were her professor and some classmates from her English courses, but she says that she doesn’t want to involve any of them in the investigation.
- What do you do?

Lathrop GPM, ▶ 171

CASE STUDY



- At the beginning of Jeff’s follow-up interview, at which his attorney advisor is present, you explain to Jeff that you will be recording the interview, just as you recorded the initial interview. Jeff’s advisor says, “Oh, I’m going to record this, too,” and proceeds to begin recording on his phone.
- How do you respond?

CASE STUDY



- Earlier in the investigation, the Title IX Coordinator asked you to provide a notice of meeting to the other party when you schedule an interview with a party. A few days after Jeff’s follow-up interview, you realize that you forgot to send a notice to Hailey about Jeff’s follow-up interview.
- What do you do?

CASE STUDY



- You have completed your interviews and have prepared a draft of the investigation report.
- Now what do you do?

STAGE THREE: REVIEW/DRAFT/ CONDUCT ADDITIONAL INTERVIEWS



- Finalize draft of investigation report
- Meet with coordinator
 - Ensure parties have received notice of all allegations
 - Confirm process and timing for sharing evidence (if any)
 - Title IX: Send hard copy or electronic format of directly related evidence
 - VAWA: Access to evidence that will be shared with the decision-maker
 - When in doubt, err on side of following Title IX process

STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- *Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations*
 - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
 - Must send to party and party's advisor in hard copy or electronic format
 - May use a file sharing platform that restricts downloading or copying
 - May prohibit photographing/copying
 - May require signing a non-disclosure agreement
 - May not limit time for review (besides the 10 days)
 - May not require supervision
 - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- Types of evidence that must be provided to parties:
 - Documents collected from the parties
 - Text messages
 - Emails
 - Social media posts and messages
 - Photos and videos
 - Other evidence
 - Police reports
 - Security footage
 - Wifi access point records
 - Party and witness interviews

STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- Sexual history = include if directly related
 - Protections related to complainant’s prior sexual history do not apply at this stage
 - Still analyze whether such evidence is “directly related to the allegations”
- Privileged information = only with waiver of privilege
- Treatment records = only with written consent

Lathrop GPM, >

* Title IX Only

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- May permit or require the investigator to redact information that is not directly related to the allegations (or that is otherwise barred from use under the final regulations)
 - Redactions are limited to information not directly related or that is otherwise specifically barred
 - May not redact other information, such as confidential, sensitive, or prejudicial information, if it is directly related to the allegations

Lathrop GPM, >

* Title IX Only

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- Maintain records of any information withheld and the rationale for doing so
- Investigator and Title IX Coordinator should both be involved in determination of what is directly related

Lathrop GPM, >

* Title IX Only

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- Ensuring privacy
 - May use platform that restricts downloading/copying
 - May require parties and advisors to:
 - Use the evidence (and investigation report) only for purposes of the grievance process and
 - Require them not to further disseminate or disclose these materials
 - May use a non-disclosure agreement
 - May use digital encryption or other practices to address privacy concerns (e.g., watermarks)

CASE STUDY




“Directly Related” Evidence



CASE STUDY




- Do you include the following in “directly related” evidence?
 - Testimony from a witness stating that Hailey had been put on academic probation before the spring semester even started and had been going to counseling for her anxiety.
 - Testimony from a witness who said that Jeff had dated another one of her friends and had pressured her into having sex.

CASE STUDY 


- Do you include the following in “directly related” evidence?
 - Jeff’s statement that all of the ski team members believe him over Hailey regarding the allegations.
 - Copies of Hailey’s text messages with her friend, which include discussion of the alleged sexual assault as well as discussion of an assault that the friend experienced a few years ago

Lathrop GPM, > 184

CASE STUDY 

- Do you include the following in “directly related” evidence?
 - Jeff’s statement that he knew that Hailey had had sex the previous year with a guy she wasn’t even dating, so he thought that she’d be open to taking things to the next level.

Lathrop GPM, > 185

PRIOR SEXUAL HISTORY 

- Complainant’s sexual behavior or predisposition are not relevant unless:
 - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
 - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent

Lathrop GPM, > 186

CASE STUDY



- You provide the directly related evidence to the parties and Jeff’s advisor and give them 10 days to submit a written response. A few hours later you receive a response from Hailey telling you that with finals starting in one week, she wants you to pause the process until after the semester is over. She tells you that the assault and stalking has really affected her academic performance, as has the grievance process. She tells you that if she can’t focus on her finals, she will fail some of her classes.
- How do you respond?

CASE STUDY



- The Title IX Coordinator decides to delay the process until after finals. (Jeff has also elected to postpone his review until after finals.) You remove the parties’ and advisor’s access to the evidence. What do you need to do now?

NOTICE OF DELAY



- Reasonably prompt timeframes
 - Including timeframes for filing and resolving appeals and informal resolution processes
 - Temporary delay or extension of timeframes for good cause, which may include
 - Absence of parties, a party’s advisor, or witnesses
 - Concurrent law enforcement activity
 - Need for language assistance or accommodations of disability
 - Must provide written notice to parties of the delay or extension and the reason for it
 - DOE guidance: also include anticipated length of delay
 - Some timeframes are set by the regulations (Title IX)



CASE STUDY



- Finals are over, and the complaint process has resumed. You again provide the parties and Jeff’s advisor with a link to the directly related evidence and give them 10 days to submit a written response.
- Both Hailey and Jeff submit responses to the directly related evidence.

CASE STUDY



- In Hailey’s response, she states:
 - “Both Jeff and Beth mentioned my mental health in their interviews. That is private information that has nothing to do with this case. And the sexual misconduct policy says that medical information is not allowed unless I consent to it, which I do not. Nothing should be mentioned about that in the report, and those parts of the interviews should be removed from evidence.”
- What do you do?

CASE STUDY



- In Jeff’s response, he states:
 - “The investigator should talk to more of Hailey and my teammates from the ski team. Brandon Brown, Carter Carlson, and Melissa Meadows will all be able to explain that I didn’t do anything wrong at the event on February 26th and that I was nothing but respectful toward Hailey.”
- What do you do?

CASE STUDY



- In addition to the excerpts above, both parties submitted additional substantive information clarifying their own accounts and responding to the other party’s account.
- What do you do with this additional information in the written responses?

STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND*



- Steps following parties’ review
 - Review parties’ responses
 - Consult with Title IX Coordinator to decide whether any additional action is needed
 - Investigator should consider parties’ viewpoints about whether the evidence directly related to the allegations is relevant and therefore whether to include it in the investigation report
 - May provide a copy of each party’s written response to the other party, but that is not required

STAGE FIVE: PACKAGE INVESTIGATION FOR DECISION-MAKERS



- Complete investigation report
- Provide access (VAWA) or hard copy/electronic format (Title IX) to parties, and parties’ advisors
 - At least 10 days prior to hearing (Title IX)
 - Allow parties to supplement with written responses (Title IX)
- Review parties’ responses
- Consult with Title IX Coordinator to decide whether any additional action is needed
- Provide report, attachments/evidence, and if applicable, parties’ written responses to adjudicator(s)



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Q & A



Lathrop GPM, >

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DRAFTING AN INVESTIGATION REPORT



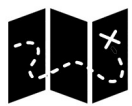
Lathrop GPM, >

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SESSION OVERVIEW

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- Legal Requirements
- Relevancy Issues
- Purpose
- Preparation
- Elements of the Report
- Role of the Title IX Coordinator
- Case Study



Lathrop GPM, >

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Other Conduct

LEGAL REQUIREMENTS

Lathrop GPM, >

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LEGAL REQUIREMENTS

- Must create investigative report that fairly summarizes **relevant** evidence (Title IX)
- Investigator cannot adjudicate (Title IX)
- Parties must be provided:
 - VAWA: information used in the decision-making process – **access required**
 - Title IX:
 - Investigation report – **must send hard copy or electronic format to parties and advisors**
 - May use a file sharing platform that restricts downloading or copying
 - May prohibit photographing/copying
 - May require signing a non-disclosure agreement
 - May not limit time for review
 - May not require supervision
 - Opportunity to submit written response

Lathrop GPM, >


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TITLE IX RELEVANCY ISSUES


- Complainant’s sexual behavior or predisposition are **not relevant unless**:
 - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
 - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent
- The investigation report should not include any information about the complainant’s sexual history that is not relevant


Lathrop GPM, >


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RELEVANCY ISSUES 


- Always consider relevance:
 - Expert reports?
 - Character evidence?
 - Lie detector test results?
 - Prior violation by respondent?
 - Allegations of similar misconduct?





Lathrop GPM,  202

PURPOSE 


- Know the purpose of your investigation and report under your institution’s policies
 - Provide a summary of your investigation
 - Allow parties to submit a response (Title IX)
 - Allow adjudicators to prepare for hearing and/or make a decision
 - Determine whether you are weighing in on credibility
 - Determine whether the adjudicator(s) want you to provide a recommendation





Lathrop GPM,  203

PREPARATION 


- Prepare for report drafting during your investigation by—
 - Staying organized
 - Taking good notes and/or recording interviews
 - Review recordings, notes, and evidence to assess whether you need more information
 - Think about how you will summarize the facts in your report to help assess whether you’ve gathered all of the evidence you need
 - Drafting the report as you conduct your investigation
 - Identify information that is not directly related
 - Identify information that is directly related but not relevant





Lathrop GPM,  204

ELEMENTS OF THE REPORT 


- Introduction
- Summary of allegations/complaint(s)
- Documents/evidence reviewed
- Witnesses interviewed
- Interview methodology
- Summary of facts by allegation OR witness summaries





Lathrop GPM,  205

ELEMENTS OF THE REPORT 


- Introduction
 - State the reason for your investigation
 - Date of complaint(s)
 - Date of notice(s) of allegations
 - Your appointment as investigator
 - Refer to policy/procedures
 - Purpose of report
 - Scope of your role (e.g., credibility, recommendation)
 - Date of close of evidence
 - Date parties were provided with copies of directly related evidence (Title IX)
 - Date parties submitted responses (if any) to directly related evidence (Title IX)





Lathrop GPM,  206

ELEMENTS OF THE REPORT 


- Summary of allegations/complaint(s)
 - Include allegations from original complaint and those gathered during interviews; consider whether to differentiate between the two
 - Check notice(s) of allegations for consistency




Lathrop GPM,  207

ELEMENTS OF THE REPORT 


- Include a list of documents and evidence reviewed
 - Policies
 - Written complaints
 - Text messages
 - Social media screen shots
 - Letters from institution to parties
 - Emails from witnesses to investigator
 - Other written documentation
 - Physical evidence
 - Parties' responses to "directly related evidence" (Title IX)




Lathrop GPM, > 208

ELEMENTS OF THE REPORT 


- Interview methodology
 - List of witnesses
 - Dates of interviews
 - Location
 - Individuals present—e.g., advisors
 - Recorded or not recorded
 - Reasoning for choice of whom to interview (and not interview)




Lathrop GPM, > 209

ELEMENTS OF THE REPORT 

- Interview methodology (cont.)
 - General questions asked by investigator
 - General approach used in interviews
 - Statements made by investigator
 - Information shared with or withheld from witnesses





Lathrop GPM, > 210

ELEMENTS OF THE REPORT 


- Summary of the facts—two approaches:
 - Summary of facts by allegation
 - Separate out each allegation
 - Give account from each party/witness
 - Describe other evidence supporting or refuting allegation
 - Witness summaries
 - Recap account from each party/witness
 - Describe other evidence offered by or gathered from witness





Lathrop GPM,  211

ELEMENTS OF THE REPORT 


- Summary of the facts
 - Include facts that may impact a credibility finding
 - Weigh in on credibility if that's part of your role
 - Adjudicator must make the ultimate determination (Title IX)
 - Exclude facts that are not relevant
 - No longer a prejudicial vs. probative evaluation (Title IX)



Lathrop GPM,  212

ROLE OF TITLE IX COORDINATOR DURING INVESTIGATION PHASE 

- Determine who will provide ongoing communication with the parties throughout the complaint process
 - Notify parties of delays and reason for delays
 - Notify parties of their own and other party's meetings
- Ensure that parties receive adequate notice of any new allegations
- Oversee process to ensure compliance with policy and designated timeframes
- Determine which process applies (if multiple)
- Review investigation report, party responses, and rebuttals
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
- Intake and investigate?
 - Beware of conflicts when filling multiple roles
- Cannot adjudicate or decide appeal (Title IX)

Lathrop GPM,  213


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CASE STUDY


Relevant Evidence to Include in
the Investigation Report


Lathrop GPM,  214

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CASE STUDY


- If you included the following in “directly related” evidence, do you include it in your investigation report?
 - Testimony from a witness stating that Hailey had been put on academic probation before the spring semester even started and had been going to counseling for her anxiety. The witness said that she thought Hailey had made up the allegations against Jeff because she was scared to get into a relationship while she was in such a bad place and because she was looking for someone to blame for her problems.

Lathrop GPM,  215

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CASE STUDY

- If you included the following in “directly related” evidence, do you include it in your investigation report?
 - Jeff’s statement that all of the ski team members believe him over Hailey regarding the allegations.
 - Jeff’s statement that he knew that Hailey had had sex the previous year with a guy she wasn’t even dating, so he thought that she’d be open to taking things to the next level.

Lathrop GPM,  216





CASE STUDY

Investigation Report:
Summary of Facts Gathered

Lathrop GPM, >

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**PROVIDING THE PARTIES
ACCESS TO REPORT**

- Title IX:
 - Prior to finalizing the report, parties and advisors must have received copies of all directly related evidence
 - At this stage, parties and advisors must receive hard copy or electronic format of investigative report (and attachments) at least 10 days prior to hearing
 - Parties must have opportunity to submit a written response to the report
 - Allow for rebuttal?
 - Use confidentiality protections listed in Stage Four, including:
 - Use of platform that restricts downloading/copying
 - Use of watermark
 - Prohibition of dissemination
 - Non-disclosure agreement

Lathrop GPM, >

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**PROVIDING THE PARTIES
ACCESS TO REPORT**

- VAWA cases that are not Title IX:
 - Access to whatever information is provided to the decision-maker(s)
 - Access to review information; not copies
 - Use of watermarks
 - Prohibit photographs, copying, downloading (check smart phones at the door)
 - Supervise access
 - Out of town access
 - secure site with ability to prohibit downloading AND
 - Zoom session during review
 - access by advisor – must be with party
 - Require confidentiality/prohibit dissemination?
 - Allow parties to submit written response?
 - Allow parties to submit rebuttal?

Lathrop GPM, >

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CASE STUDY


Parties Review and Respond to the Investigation Report


Lathrop GPM,  220

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CASE STUDY


- You send a link to the investigation report and attachments to the parties and Jeff’s advisor. Your policy provides the parties with five days to submit written responses to the report. You send the report on a Monday, with a Saturday deadline.
- On Wednesday, Jeff sends you an email stating that he just started a new internship and doesn’t have enough time to review the report and work on his response. He asks you if you can extend the deadline to the following Monday, so that he can have the whole weekend to work on the review and response.
- How do you respond?

Lathrop GPM,  221

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CASE STUDY

- You provide a short extension and issue a notice of delay to the parties.
- Hailey and Jeff both submit timely responses to the Investigation Report.

Lathrop GPM,  222

CASE STUDY



Excerpt from Hailey’s Response to the Investigation Report:

- Jeff made it sound like if I wasn’t wearing a bra that that was an invitation for him to touch my breasts. My clothing choices do not give anyone the right to touch me without my consent. Jeff’s argument is like saying a woman who dresses provocatively is “asking for it.” Jeff’s statements should be removed from the report.

CASE STUDY



Excerpt from Jeff’s Response to the Investigation Report


- I told the investigator that she should talk to people at the poetry reading, but she didn’t because Hailey asked her not to. Anyone at the reading could tell the investigator that Hailey was fine. Their testimony would prove that she is just making things up to blow this all out of proportion. And it’s not right for her to be able to eliminate witnesses. If a witness saw what happened, the investigator needs to talk to that witness.

CASE STUDY





Excerpt from Jeff’s Response to the Investigation Report (cont.)

- The policy says that words *or overt actions* can show consent. Hailey invited me to come over to “watch Netflix and chill,” which everyone knows means to have sex or fool around while watching. She took off her bra and she moved her arms out of the way as I moved my hand up along her stomach toward her breasts. These were words and overt actions that showed that she consented. She also said that she was ok with it. If she did all of those things, there is no way that I should be found guilty of sexual assault.


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THE DECISION-MAKING PROCESS





Lathrop GPM,  226

SESSION OVERVIEW


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- Decision-Making Process
- Weighing Evidence and Assessing Credibility
- Determination
- Case Study
- Sanctions and Remedies
- Notice of Determination
- Appeals



Lathrop GPM,  227


DECISION-MAKING PROCESS


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- Must be prompt, fair and impartial
 - Timely completion
 - Timely notice of meetings
 - Consistent with policies
 - Conducted by officials with training and without conflict/bias


Title IX


VAWA

Lathrop GPM,  228


DECISION-MAKING PROCESS 


- Objective evaluation of all relevant evidence
 - Inculpatory and exculpatory evidence
 - Credibility determinations may not be based on status as complainant, respondent, or witness
- Presumption of non-responsibility

Lathrop GPM,  229


DECISION-MAKING PROCESS 

- What evidence will the decision-maker(s) consider?
 - Investigation report
 - Parties' response statements
 - Recordings
 - Live hearing (required under Title IX)
- NOTE: Whatever information is provided to the decision-maker(s) for adjudications or hearings must be shared with the parties
 - Title IX or VAWA

Lathrop GPM,  230

LIVE HEARING 

- General requirements under Title IX
 - Must provide live hearing
 - Permit each party's advisor to ask the other party and witnesses "all relevant questions and follow-up questions"
 - If party does not have advisor, institution must provide one for cross-examination

Lathrop GPM,  231

HEARING—RELEVANCY DETERMINATIONS



- Decision-maker may hear arguments regarding relevancy of a question on the spot or may tell parties to reserve arguments for appeal (incorrect relevancy determination could be an alleged procedural error on appeal)
- Must allow question if relevant, even if misleading or assumes facts not in evidence
- Can establish rule that duplicative questions are not relevant
- Exclude questions with caution

HEARING—CROSS-EXAMINATION




- Party or witness who does not appear at the hearing
 - Cannot rely on any statements from a party or witness who does not submit to cross-examination
 - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
 - Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
 - Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

HEARING—CROSS-EXAMINATION




- School also cannot coerce unwilling participant
 - Be careful with any requirement that a student or employee cooperate with grievance process
 - Discipline for not attending hearing may constitute retaliation

HEARING—OTHER PROCEDURAL RULES 


- May establish additional rules that apply equally to both parties
 - Cross-examination must be respectful, non-abusive, not intimidating
 - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
 - Whether investigator may be called as a witness
 - Process for making objections to the relevance of questions and evidence
 - Other procedures at the hearing
 - Opening statements by parties or advisors
 - Closing statements by parties or advisors
 - Reasonable time limitations on hearings

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HEARING—OTHER PROCEDURAL RULES 

- Some procedural rules are prohibited
 - Cannot prohibit a party from conferring with his or her advisor during the hearing
 - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
 - Decision-maker may determine how much weight to give such evidence, as long as applied equally to both parties


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INVESTIGATOR ROLE IN DECISION-MAKING PROCESS 

- If role is investigator (and not adjudicator), role in adjudication should be limited
 - May be asked to review parties' responses to investigation report
 - Avoid communication with adjudicators, if at all possible (outside of the hearing process)
 - If communication with adjudicators outside the hearing process is necessary, work with Title IX Coordinator to provide the parties with access to additional information
 - May be called as witness at hearing?




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train 



CASE STUDY


Live Hearing


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CASE STUDY


- At the hearing:
 - Matt did not participate in the hearing.
 - The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following...


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CASE STUDY


- At the hearing (cont.):
 - The panel called Hailey’s roommate, Molly, as a new witness. Molly confirmed the parties’ account that she came home while they were kissing on the couch. Molly stated that when she walked in the door, she saw Jeff and Hailey on the couch together. Molly stated that she “could tell [she] had interrupted something, because they were like scrambling around and then totally acting weird.” Molly stated that she went straight to her room and didn’t see Jeff again that night. Molly stated that when she came out of her room to get ready for bed, she asked Hailey how her night was. Molly stated that Hailey replied, “I don’t want to talk about it.” Molly stated that Hailey seemed really upset and her eyes looked red, like she’d been crying.


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CASE STUDY


- At the hearing (cont.):
 - The panel called Hailey’s English professor who organized the poetry reading. When asked about Hailey’s demeanor and performance at the reading, the professor stated, “She seemed a little off during her reading. I mean, she still did well, but she did seem a little distracted. Not quite as polished as normal.”


Lathrop GPM,  241

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CASE STUDY


- At the hearing (cont.):
 - The panel asked Jeff’s friend Tyler if he had talked to Jeff about Hailey during the spring semester. Tyler stated, “Yeah, I mean, we all knew that he really liked her and was pretty bummed when things didn’t work out and she kinda cut him out.” When asked what he meant by Hailey cutting Jeff out, Tyler stated, “Like, she stopped talking to him at all and wouldn’t respond to messages.” When asked how he knew Jeff was “bummed” after Hailey “cut him out,” Tyler stated, “Well, he was just still constantly talking about her. I think he’d been really excited about her, and it was hard for him to, like, let her go, you know?”

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train 


WEIGHING EVIDENCE AND ASSESSING CREDIBILITY



Lathrop GPM,  243

EVIDENTIARY ISSUES


- Always consider relevance and weight of evidence
- Types of evidence
 - Statements from parties and witnesses contained in investigation report
 - Live testimony and cross-examination
 - Character evidence
 - Physical evidence (texts, video, security access information, etc.)
 - Medical information (including mental health records)
 - Only with waiver/consent
 - Consider need for expert guidance in understanding and interpreting information
 - Polygraph/lie detector test results



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244

EVIDENTIARY ISSUES


- Complainant’s sexual behavior or predisposition are not relevant unless:
 - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
 - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent
 - The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence



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EVIDENTIARY ISSUES

- Prior bad acts/pattern evidence:
 - Allegation v. policy violation
 - Determine relevance and weight of evidence
 - May be relevant in fact-finding *and/or* sanction determination
 - Consider timing and process for requesting and providing access to the adjudicators and the parties (Title IX vs. VAWA)




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246

EVIDENTIARY ISSUES




Weighing Evidence / Assessing Credibility:

- Is information the witness provided accurate based on other evidence?
- How did the witness learn the facts?
- How well did he or she recall facts?
- How forthcoming was the witness?
- Did the witness seem honest and sincere? (*caution*)
- What are the possible motives for being less than truthful?
- What is the witness's relationship to the complainant and respondent?
- Are there other factors that bear on the believability of the witness?



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DEALING WITH INCULPATORY & EXCULPATORY EVIDENCE




- Consider all relevant evidence provided
 - Do not cherry-pick evidence that supports your conclusion
 - Do not ignore contrary evidence
- If evidence supporting both conclusions exists:
 - Is some evidence stronger than other evidence? If so, why?
 - Do you find one party more credible than the other party? If so, why?
 - If a witness's statement is contrary to your conclusion, why do you not believe the witness?

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DETERMINATION



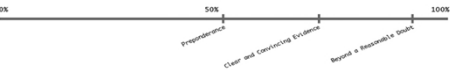



- Finding re: policy violation
 - Sexual contact/harassment
 - Consent/unwelcomed
- Sanctions
- Remedies
- Written Notice


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DETERMINATION—FINDING 


- Standard of proof
 - "Preponderance of the evidence" or "clear and convincing" (not "beyond a reasonable doubt")
 - Use same standard of proof for all formal complaints of sexual harassment
 - Burden is on the school to gather sufficient evidence to reach a fair, impartial determination
 - Presumption of non-responsibility that would need to be overcome
 - Decision-maker(s) must ultimately decide whether it was more likely than not that a policy violation has occurred (preponderance) or whether it is highly probable that a policy violation has occurred





Lathrop GPM,  250


DETERMINATION—FINDING 

- Preponderance:
 - Must decide either that:
 - It was "more likely than not" that the Respondent violated the institution's sexual misconduct policy OR
 - That there was insufficient evidence to establish that it was "more likely than not" that the Respondent violated the institution's sexual misconduct policy
- Clear and convincing:
 - Must decide either that:
 - It was "highly probable" that the Respondent violated the institution's misconduct policy OR
 - That there was insufficient evidence to establish that it was "highly probable" that the Respondent violated the institution's sexual misconduct policy



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CASE STUDY 



Relevant Definitions

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**CASE STUDY –
DEFINITION OF SEXUAL ASSAULT**



Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person’s consent. Sexual contact includes intentional contact by the accused with the victim’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

**CASE STUDY –
DEFINITION OF CONSENT**



Consent means words or overt actions by a person in advance clearly and affirmatively communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.


**CASE STUDY –
DEFINITION OF CONSENT**



The definition of consent is subject to the following:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- An individual known to be – or who should be known to be – **incapacitated**, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.


**CASE STUDY –
DEFINITION OF STALKING**



- Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.
 - **Course of conduct** means two or more acts, including but not limited to, acts which the stalker directly, indirectly, or through others, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
 - For purposes of this definition, not all communication about a person will be considered to be directed at that person.
 - **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.
 - **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

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**CASE STUDY –
DEFINITION OF STALKING**



- Stalking behavior includes, but is not limited to:
 - Repeated, unwanted, and intrusive communications by phone, mail, email, texting, and/or other electronic communications, including social media;
 - Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
 - Following or lying in wait for the victim at places such as home, school, work, or recreational facilities;
 - Making direct or indirect threats to harm the victim, or the victim's children, relatives, friends, or pets;
 - Damaging or threatening to damage the victim's property;
 - Repeatedly posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth, that would cause a person to feel threatened or intimidated.

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CASE STUDY




Determine Whether
a Policy Violation Occurred
and Rationale for your Decision


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**DETERMINATION—
SANCTIONS AND REMEDIES**




- Consider who will decide the sanctions and how
 - Consider limited role of Title IX Coordinator
- Any information provided to individual(s) who determine sanctions must also be provided to the parties
- Policy must list *all* possible sanctions and describe the range of remedies
- The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement




Lathrop GPM,  259


**DETERMINATION—
SANCTIONS AND REMEDIES**




- Must treat complainants and respondents equitably by
 - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
 - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
 - May include the same individualized services as "supportive measures"
 - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
 - Following grievance process that complies with regulations before imposing disciplinary sanctions or other actions that are not supportive measures
- Consider remedies for broader student population


Lathrop GPM,  260

NOTICE OF DETERMINATION




- Identification of the allegations potentially constituting sexual harassment
- Procedural steps since complaint
 - Notices to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held
- Findings of fact
- Conclusion regarding application of code of conduct to the facts
- Statement of and rationale for the result as to each allegation
 - Determination of responsibility
 - Any disciplinary sanctions imposed on respondent
 - Whether remedies will be provided to complainant
- Appeal information
- Simultaneous delivery to the parties
- Becomes final either the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely

Lathrop GPM,  261

APPEALS UNDER TITLE IX 


- Must be offered to both parties
 - From a determination regarding responsibility
 - From a recipient’s dismissal of a formal complaint or any allegations therein
- Required bases:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
 - May offer an appeal equally to both parties on additional bases

Lathrop GPM, ▶ 262

APPEALS UNDER TITLE IX 

- Requirements
 - Notify other party in writing when an appeal is filed
 - Appeal officer is different than Title IX Coordinator, investigator and decision-maker at hearing
 - No conflict of interest or bias
 - Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome
 - Written decision describing result of appeal and rationale
 - Simultaneous delivery of result to parties

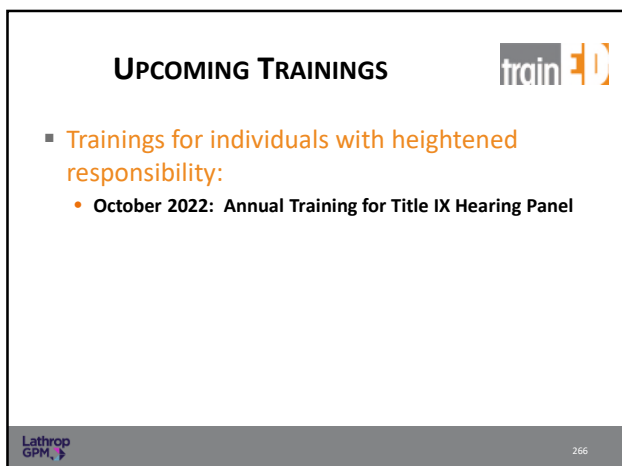
Lathrop GPM, ▶ 263

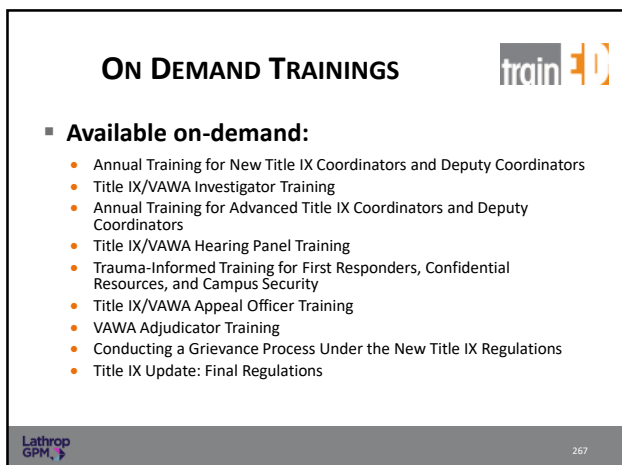
APPEALS UNDER VAWA 

- Not required, but if offered, must do so equally
- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
 - Right to advisor
 - Notice of meetings
 - Access to information used by appeals panel/individual
 - Simultaneous notice of outcome

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2022 Title IX/VAWA Investigator Training

Handout 1

Complaint

On March 21, 2022, Hailey Hanson made a complaint of sexual misconduct against Jeff Jeffries.

Sexual Misconduct Complaint Form

COMPLAINANT NAME: Hailey Hanson

ADDRESS: 1234 On-Campus Drive

DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 19, 2022

RESPONDENT NAME: Jeff Jeffries

ADDRESS: 999 Dorm Room Lane

ALLEGATIONS:

I met Jeff Jeffries in the fall through the Nordic Skiing Club. We were friends and hung out a few times in January and February. We kissed once or twice before and everything was fine. But on February 19, Jeff took things too far. We were watching a show in my dorm room and we started kissing. A little while later, Jeff put his hand up my shirt and touched my boob without asking. I was not okay with him touching me there.

After that night, I tried to avoid Jeff, but he wouldn't leave me alone. He kept trying to see me and snap me. He even started showing up places that he knew I would be. He came to my friend's party and my poetry reading. He's stalking me on social media. He even left a creepy note on my car. I'm really scared and I need him to leave me alone.

I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.

X Hailey Hanson

2022 Title IX/VAWA Investigator Training

Handout 2

Excerpt of Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

2022 Title IX/VAWA Investigator Training

Handout 3

Excerpt of Amended Notice of Allegations

On March 21, 2022, a formal complaint of alleged sexual misconduct was submitted by Hailey Hanson to the Title IX Coordinator alleging conduct by Jeff Jeffries. In the formal complaint, Hailey alleged that:

- On February 19, 2022, in her on-campus dorm room, Jeff sexually assaulted her by engaging in non-consensual touching of an intimate body part.
- Hailey alleged that between February 20, 2022 and March 17, 2022, Jeff engaged in a course of conduct directed at Hailey that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress, including:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome electronic messages to Hailey.
 - **On February 24, 2022, at an unknown outdoor location on campus, Jeff communicated to Hailey via a third party.**
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - **On March 15, 2022, Jeff communicated about Hailey via electronic communication.**
 - On March 17, 2022, in University Parking Lot D, Jeff communicated to Hailey via written communication.

2022 Title IX/VAWA Hearing Panel Training

Handout 4

Definition of Sexual Assault

Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person's consent. Sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

Definition of Consent

Consent means words or overt actions by a person in advance clearly and affirmatively communicating a freely given present agreement to participate in a particular sexual contact or activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual contact or activity to obtain consent for that contact or activity.

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age (16).
- Consent is a mutually understood and freely given "yes," not the absence of "no."
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or **coercion**, as that term is defined below.
- An individual known to be – or who should be known to be – **incapacitated**, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Definition of Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including but not limited to, acts which the stalker directly, indirectly, or through others, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
- For purposes of this definition, not all communication about a person will be considered to be directed at that person.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking behavior includes, but is not limited to:

- Repeated, unwanted, and intrusive communications by phone, mail, email, texting, and/or other electronic communications, including social media;
- Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
- Following or lying in wait for the victim at places such as home, school, work, or recreational facilities;
- Making direct or indirect threats to harm the victim, or the victim's children, relatives, friends, or pets;
- Damaging or threatening to damage the victim's property;
- Repeatedly posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth, that would cause a person to feel threatened or intimidated.

2022 Title IX/VAWA Investigator Training

Handout 5

Excerpts from Party Statements in Response to the Directly Related Evidence

Excerpt from Hailey's Response to the Directly Related Evidence

Both Jeff and Beth mentioned my mental health in their interviews. That is private information that has nothing to do with this case. And the sexual misconduct policy says that medical information is not allowed unless I consent to it, which I do not. Nothing should be mentioned about that in the report, and those parts of the interviews should be removed from evidence.

Excerpt from Jeff's Response to the Directly Related Evidence

The investigator should talk to more of Hailey and my teammates from the ski team. Brandon Brown, Carter Carlson, and Melissa Meadows will all be able to explain that I didn't do anything wrong at the event on February 26th and that I was nothing but respectful toward Hailey.

2022 Title IX/VAWA Investigator Training

Handout 6

Investigation Report Excerpt:

Background

Hailey and Jeff are both rising juniors at the University. The parties agree that they met in November 2021 during their sophomore year when Hailey joined the University's co-ed Nordic Skiing Club, of which Jeff had been a member since their freshman year. Both parties stated that they became friends during the skiing season and had hung out one-on-one a few times during January and February. Hailey stated that they had kissed "once or twice" prior to February 19, 2022. Jeff stated that they had "hooked up" a few times prior to February 19, 2022. When asked what he meant by "hooked up," Jeff stated, "Like we'd made out." When asked, both parties stated that they were never in an official dating relationship. Hailey stated that they were "just hanging out." Jeff stated that he "thought the relationship was going somewhere, but then obviously it didn't happen."

February 19, 2022 Sexual Assault Allegation

Hailey's Account

Hailey stated that on February 19, 2022, she and Jeff were at a skiing competition during the day and decided to hang out at her dorm at night to watch a show. Hailey stated that Jeff came over later that night, and they started watching Stranger Things. When asked what time Jeff arrived at her dorm room, Hailey stated that she thought it was around 9:00 or 9:30. When asked if anyone else was at the dorm room while Jeff was there, Hailey stated that at first, her three roommates were all either out of town or just out for the night, but that her roommate Molly came home later on, while Jeff was still there. Hailey stated that she and Jeff were watching the show in the shared living room of her dorm room, sitting next to each other on a couch.

Hailey stated that while they were watching, Jeff put his arm around her and pulled her closer to him, started kissing her neck and chin, and eventually they started kissing on the lips. When asked if the kissing was welcome, Hailey stated, "Yeah, I was expecting that."

Hailey stated that while they were kissing, Jeff put his hand up her shirt. When asked whether his hand was up the back or the front of her shirt, Hailey stated, "Just the back at first." When asked if Jeff touching her back under her shirt was welcome, Hailey stated, "Yeah, I mean, I didn't think much of it. It was just part of kissing."

Hailey stated that Jeff then moved his hand to her front and started touching her breasts. When asked if she was wearing a bra, Hailey stated, "I think so, I can't be like 1000% sure, though." When asked if Jeff touched her breasts over or under her bra, Hailey stated, "He definitely touched my skin." When asked if anything was said by her or Jeff before Jeff touched her

breasts, Hailey stated, “No, neither of us said anything. He just moved his hand there.” When asked if she consented to Jeff touching her breasts through words or overt actions, Hailey stated, “No. I was not comfortable with that and I certainly didn’t do or say anything to make him think that he could just do that. I mean, I was still sort of trying to decide where this was going, so that was way too much for me.”

When asked how she reacted to Jeff touching her breasts, Hailey stated, “I was just so shocked I didn’t know what to do. And it was awkward. We had been kissing, but we hadn’t done more and we hadn’t really talked about what we were or what was going on, you know? And I was just like, is he going to want to have sex? Like I don’t want that, but what do I do? So I didn’t say anything or push his hand away, nothing like that. We were still kissing, but he had to be able to tell that I wasn’t into it, I was kinda shutting down.” When asked what she meant by “shutting down,” Hailey stated, “Just, like, letting him kiss me, but not really actively participating anymore.” When asked how long Jeff touched her breasts, Hailey stated, “Just like a minute or two, I think.” When asked what happened after Jeff touched her breasts, Hailey stated, “We kept kissing for a bit and then my roommate Molly got home.” When asked what happened when her roommate got home, Hailey stated, “We stopped and like moved apart. I think we both heard her keys so that’s when we, like, moved away. Cause the door opens into the living room, so we were like right there.” Hailey stated that Molly said “something like, ‘oh, sorry for interrupting,’” and then went into her (Molly’s) bedroom.

When asked if they had any physical contact after Molly went into her bedroom, Hailey stated, “He started kissing me again, but that was it. Things seemed to like, cool down, I guess.” When asked how long they kissed after Molly went into her bedroom, Hailey stated, “A few minutes maybe, not long.” When asked how long they kept watching the show after they stopped kissing, Hailey stated, “I think we were on the last episode we watched that night, so it couldn’t have been more than 20, maybe 30 minutes.”

When asked what happened after they finished the show, Hailey stated, “I said I was tired and was gonna to go to bed. He got up to leave, gave me a kiss on my cheek, and said he wanted to see me the next day. I responded with something non-committal.” When asked if she saw Jeff the next day, Hailey stated, “No, he Snapped me asking to hang out, but I told him I wasn’t feeling well.”

Jeff’s Account

Jeff stated that on February 19, 2022, he and Hailey were at a Nordic Skiing event all day. He stated that Hailey was “all over [him]” and invited him to come over that night to “watch Netflix and chill.” When asked what he meant by “all over [him],” Jeff stated, “It was partly just the way she was talking to me—you know, like, really smiley and joking around a lot. But she also came and sat on my lap at one point. Then there was the ‘watch Netflix and chill’ comment.” When asked how he interpreted Hailey’s invitation to “watch Netflix and chill,” Jeff stated, “You know, I thought she wanted to do stuff while we watched, like mess around. It’s pretty common knowledge that that’s what that means.” When asked what he meant by “do stuff” and “mess

around,” Jeff stated, “Like sexual stuff, touching, more than just kissing—which we had already done before.” When asked to clarify whether he meant they had already kissed before or that they had already done more than kissing before, Jeff stated, “I meant that we had already kissed before. But I took Hailey’s comment to mean she wanted to take things to the next level.”

Jeff stated that once they got back to campus after the event, he went to his place, showered, ate dinner, and went over to Hailey’s dorm. When asked what time he arrived at Hailey’s dorm, Jeff stated, “It was about nine, I think.”

Jeff stated that he and Hailey “talked a little” and then started watching *Stranger Things*. When asked what they talked about, Jeff stated, “Just small talk, the competition that day, what we ate for dinner, stuff like that.”

Jeff stated that while they were watching the show, they “slowly started getting more physical.” When asked what he meant by “getting more physical,” Jeff stated, “You know, like my arm was around her, her head was on my shoulder or chest. That type of thing.”

Jeff stated that after sitting like that for a while, they started kissing. When asked how the kissing began, Jeff stated, “I think I just kissed her on her forehead, and she turned toward me, and I went in for a kiss on the lips. The kissing went from there.” When asked what he meant by the kissing went from there, Jeff stated, “Well, we kissed for a while, and we were like holding each other with our arms around each other.”

Jeff stated that while they were kissing, Hailey “put both her hands under [Jeff’s] shirt.” When asked whether Hailey put her hands under the front or back of Jeff’s shirt, Jeff stated, “The back.” When asked if anything was said before Hailey put her hands under the back of Jeff’s shirt, Jeff stated, “No, I don’t think so.” Jeff stated that Hailey then pulled back and got up and said “I’ll be right back, my bra is bugging me.” When asked if she said anything else, Jeff stated, “I think she said that her bra was digging into her or was too restrictive or something. I can’t recall exactly what it was, but something like that. So I assumed that she was going to change and then when she came back, she was wearing the same shirt with no bra on.”

Jeff stated that Hailey then sat down next to him again on the couch and “kind of pushed on me, like pushed until I was lying down and sort of under her and next to her on the couch.” Jeff stated that they continued making out and he then put his hands underneath Hailey’s shirt on her lower back. Jeff stated that he then moved his hands up her back and noticed that she wasn’t wearing a bra anymore. Jeff stated that he then started to move one of his hands around Hailey’s waist to her front side. When asked if his hand was still under Hailey’s shirt, Jeff stated, “Yeah, it was.” Jeff stated, “At that point I started moving my hand higher on her stomach, but I moved slowly, trying to gauge her reaction.” Jeff stated that Hailey kept kissing him and moved her hands and arms up around Jeff’s neck. Jeff stated that he thought Hailey moved her hands and arms so that her arms would not be in the way of Jeff continuing to move his hand up. Jeff stated that he then touched Hailey’s chest. When asked if by “chest” he meant her breasts, Jeff stated, “Yes, her breasts.” When asked if anything was said before he touched Hailey’s breasts, Jeff

stated, “While I was touching them, I sorta checked in and asked, you know, is this ok?” Jeff stated, that Hailey responded, “Yes.” When asked how long he touched Hailey’s breasts, Jeff stated, “Not long, like a minute.” When asked what happened after he touched Hailey’s breasts, Jeff stated, “Her roommate came home, so we stopped that and just like kept making out for a while, then we went back to cuddling and watching the show. Her roommate was, like, in the next room, so we weren’t going to do anything else.”

When asked what words or actions from Hailey indicated that she consented to him touching her breasts, Jeff stated, “I mean like, the whole progression I guess. We were kissing and then she takes her bra off cause it is too restrictive. That definitely sent a message. And then she wants to lie down on the couch, we keep kissing. The whole thing said it was moving that way. And I asked if it was okay.”

When told of Hailey’s account that after he touched her breasts Hailey was “kinda shutting down” and was just “letting him kiss [her]” and was “not really actively participating anymore,” Jeff stated, “No, she was into it the whole time. She had her arms around me and was, like, running her fingers through my hair. She was definitely participating.”

Jeff stated that after the episode ended, Hailey said she was tired, so he decided to go back to his place. When asked if they said anything else before he left, Jeff stated, “We talked about our plans for the next day. I think I said something about how it sucks that we were interrupted and maybe we could try again tomorrow.” When asked how Hailey responded, Jeff stated she said “Yes.” When asked if they made plans for when or where to meet, Jeff stated, “No, told her I would Snap her in the morning.” Jeff stated that before he left, he said, “This was really great,” and Hailey responded, “Yeah, it was.”

Jeff stated that the next morning he sent Hailey a message about meeting up, but she said she was sick.

Hailey’s Follow-Up

When told of Jeff’s account that she was “all over [him]” during the event on February 19 and invited him to “watch Netflix and chill,” Hailey stated, “I wouldn’t say I was all over him, but we often flirted with each other, and I might have made a joke like we could watch Netflix and chill. I thought we might make out or something. I didn’t mean anything more by it.” When asked if she sat on Jeff’s lap at some point during the ski event, Hailey stated, “Yeah, I think that happened.”

When told of Jeff’s account that Hailey got up and said that her bra was too restrictive, Hailey stated, “Oh that’s right, I forgot. My bra was really bugging me with the way we were sitting on the couch, so I went to change it. I don’t remember saying anything to Jeff about it. I guess I might have said my bra’s bugging me or something.”

When told of Jeff's account that Hailey put her hands under the back of his shirt, before Jeff put his hands under her shirt, Hailey stated, "Yeah, I might have done that, but touching his back and him touching my breasts are very different."

When told of Jeff's account that she pushed him to lay back on the couch, Hailey stated, "We did end up laying down for part of it. I didn't push him, I think we just ended up like that as we were kissing." When told of Jeff's account that when he was moving his hands up toward Hailey's breasts, Hailey moved her hands and arms up around Jeff's neck so that they were not in Jeff's way, Hailey stated, "I don't remember exactly where my hands were at that exact moment, but if I moved them, it wasn't for that reason."

When told of Jeff's account that he asked, "Is this OK?" while touching Hailey's breasts and that Hailey answered, "Yes," Hailey stated, "I didn't say 'yes,' I said something like, 'I guess so.' He was already touching me by that point. I didn't know what to say. I didn't want it to go any further and I was just distracted trying to figure out how to slow things down."

When told of Jeff's account that before he left on the night of February 19, he said, that it sucks that they were interrupted and that they should try again the next day and that Hailey responded "yes," Hailey stated, "I think I just said something like 'mmhmm.' I was still in shock, and I didn't want to let on how upset I was. I just wanted him to leave."

When told of Jeff's account that Hailey agreed to meet up the next day, Hailey stated, "Again, I just wanted him to get out of there, so I think I said like, 'Ok, sure, text me.'"

February 20 – March 17, 2022 Stalking Allegation

Snapchat Messages Between February 20, 2022 and March 5, 2022

Hailey's Account

Hailey stated that after the incident on February 19, Jeff often sent her messages via Snapchat, asking to hang out. Hailey stated that at first she made excuses for why she couldn't hang out. Hailey stated that she eventually "stopped responding for a while," but Jeff "kept Snapping me, becoming more and more creepy." When asked what she meant by the Snaps being "creepy," Hailey stated, "Just the frequency of them. And he seemed kinda desperate." Hailey stated that during the time when she wasn't responding to his Snaps, Jeff wrote a Snapchat message that said, "I'm really sorry for what happened between us. I wish I could go back in time and start over." Hailey stated that on March 5, 2022, she sent a message to Jeff asking him not to message her anymore. Hailey submitted a screenshot of the exchange, which states:

Jeff: HRU¹
Jeff: Fun seeing you last night
Hailey: Ive made it clear I don't think we should talk plz stop msging me

Hailey stated that she didn't receive any more Snaps from Jeff after that.

When asked if any of the messages Jeff sent were sexual in nature, Hailey stated, "No, nothing like that, just always wanting to hang out or talk. But it was always, like, in the back of my mind, you know? Because I knew that's what he really wanted."

Jeff's Account

When asked when he next communicated with Hailey after he sent her a message on Snapchat on the morning of February 20 about meeting up, Jeff stated, "We Snapped more that day and the days following, and then we saw each other at practice that week."

When asked what they communicated about in the Snapchat messages, Jeff stated, "The usual stuff, how are you? What are you up to?" When asked who usually initiated the messages, Jeff stated, "I think at first we both did, but after a while I was the one starting the conversations." When asked how Hailey responded to Jeff's messages, Jeff stated, "At first she seemed normal, but then it seemed like she was avoiding me, always seeming busy." Jeff stated that Hailey eventually stopped responding to messages. Jeff stated, "I kept reaching out. I was worried about her. She'd told me some personal stuff she'd been going through. I wanted to make sure she was okay. I realized by that point that nothing, like, romantic was going to happen between us, but we were still friends. It's a small school. We're on the same ski team. I didn't want things to be weird."

When asked how long he continued to reach out to Hailey via Snapchat, Jeff stated, "Maybe a week or two. One day she responded to a Snap I'd sent, telling me that she didn't want me to message her anymore. So, I respected that and didn't message her again."

When told of Hailey's account that Jeff sent her a Snapchat message stating, "I'm really sorry for what happened between us. I wish I could go back in time and start over," Jeff stated, "I don't think those were my exact words." Jeff stated that maybe a week or so after February 19, a teammate told him that Hailey said that she did not want to date him and that Hailey told the teammate that she wished they had never made out. When asked how that conversation came up, Jeff stated, "I think I had just mentioned that I hadn't talked to Hailey in a few days and then they told me." Jeff stated, "I felt like, oh, okay, I'm fine just being friends and I just need to tell her that." Jeff stated, "So that's why I sent that message. I think I said something like this doesn't need to be awkward, let's just start over as friends."

¹ When asked if she knew what Jeff meant by "HRU," Hailey stated, "That's how are you."

February 24, 2022 Communication through a Third Party

Hailey's Account

Hailey stated that the week after the February 19 incident, she skipped ski practice on Monday, but went the rest of the week, hoping she could “just ignore Jeff.” Hailey stated, “It was the last week of the season. We had one competition left. I just wanted to put my head down and get through it.” Hailey stated that she was able to avoid Jeff at practice and she “thought he had gotten the hint.”

However, Hailey stated that later in the week one of her teammates, Beth, started talking with her and asked if she was alright. Hailey stated, “I thought it was weird because we didn’t talk that much. I didn’t really know her. So I said, ‘Yeah, why?’” Hailey stated that Beth told her that Jeff told Beth he was worried about Hailey and wanted Beth to see if she was okay.

Hailey stated that the conversation with Beth made her “super uncomfortable.” Hailey stated, “I was really weirded out that he was sending people to check on me.”

Jeff's Account

When asked when he saw Hailey in person after being at her dorm on February 19, Jeff stated that he saw her at practice the next week. When asked if they talked at practice, Jeff stated, “Not really. She was acting strange.” When asked what he meant by acting strange, Jeff stated, “Like she wasn’t talking, wasn’t coming near me. It was definitely not the way things had been between us before.” Jeff stated, “After a few days, I could tell that something was up. Between the Snaps and seeing her at practice, she seemed to be different, like she was ghosting me, but I knew she’d been sick, so I thought maybe she was just tired. It wasn’t until later that I learned what was really the matter.”

When asked if he ever asked anyone to speak with Hailey on his behalf, Jeff stated, “I wouldn’t say it was on my behalf, but I was worried about her, so I asked one of the other girls on the team to see if she was okay. I was just being a good friend.”

Beth's Account

Beth stated that she knows both Jeff and Hailey from the Nordic Skiing Club. She stated that she is “probably closer with Jeff than with Hailey.” When asked about Jeff and Hailey’s relationship and interactions with each other, Beth stated, “This was Hailey’s first year on the team, and she and Jeff seemed to hit it off right away. We all thought that they were going to get together. That seemed to be where things were heading. Then toward the end of the season, they stopped talking to each other.”

When asked if she knew the reason for the change in their relationship, Beth stated, “Hailey seemed to have some of her own issues that she was working through. I always got the impression that she just wasn’t stable, emotionally or maybe even mentally.”

When asked if she ever communicated with Jeff or Hailey about the other person, Beth stated that after Hailey started acting weird toward Jeff, Jeff asked Beth to “check on Hailey to make sure she was okay.” Beth stated that she tried to talk to Hailey, but Hailey “was immediately suspicious of me and asked why I was asking her how she was.” Beth stated that she told Hailey Jeff wanted to make sure she was okay.

When asked whether she had any further conversations with either party about the other person, Beth stated that she did not.

February 26, 2022 Nordic Skiing Club Competition

Hailey’s account

Hailey stated that throughout the day on February 26, while they were at their last ski competition of the season, Jeff “followed [her] around and just stared at [her] all day.” When asked to explain how Jeff followed her, Hailey stated, “While we were getting ready for the event and warming up, he was just always near me and looking at me.” Hailey stated that when she completed the race, Jeff was “at the finish line, waiting for [her] and then just sort of stayed near [her] as things were wrapping up.” Hailey stated that the team went out for dinner afterward and she made sure to sit far away from Jeff, but she “kept catching [Jeff] staring at [her] from across the table.” When asked if Jeff talked with her on February 26, Hailey stated, “No. By that time I had stopped responding to his texts, so I think he had gotten the hint that I didn’t want to talk. But that didn’t stop him from staring, I guess.”

Jeff’s Account

When asked if he recalled seeing Hailey at the February 26 Nordic Skiing event, Jeff stated, “Of course I saw her. It’s a small team. It’s impossible not to see other people on the team.” When told of Hailey’s account that Jeff followed her around and stared at her throughout the day, Jeff stated, “I was at a competition with my team. I am going to be near my teammates. I am going to cheer on my teammates when they finish the race. I am going to sometimes make eye contact with my teammates when we are sitting at a table eating dinner together.” Jeff stated, “She’s accusing me of stalking for being on the same team as her.”

Beth’s Account

When asked if she recalled seeing Jeff and Hailey at the February 26, 2022 ski competition, Beth stated, “Yeah, of course.” When asked if she saw Jeff and Hailey interact at all, Beth stated, “No, not that I saw. Hailey was still avoiding Jeff.” When asked if she saw Jeff go near Hailey or look at her during the event, Beth stated, “No. He just seemed to be focused on the event.” When asked if she saw verbal or nonverbal interaction between Jeff and Hailey at dinner after the event, Beth stated, “No. I didn’t notice anything.”

March 4, 2022 Off-Campus Party

Hailey's Account

Hailey stated that the next Friday night she was at a party at a house off campus, and Jeff showed up to the party. Hailey stated, "Jeff wasn't even really friends with the person who threw the party. I know he just came because he knew I would be there."

Hailey stated that she "was trying to avoid [Jeff]" but "he kept following [her] from room to room." Hailey stated that Jeff eventually "cornered" her in the kitchen and started talking to her. Hailey stated that Jeff asked her how she'd been and told her he missed her. Hailey stated that he asked if they could hang out soon. Hailey stated that she told Jeff she was really busy with school and that she didn't think them hanging out together "was a good idea." Hailey stated that she told Jeff she needed to find her friend and then left the kitchen. Hailey stated that she was so upset from the interaction with Jeff that she left the party right away.

When asked if anyone else was in the kitchen during their conversation, Hailey stated, "Not anyone that I knew. But my friend Courtney saw me right after it before I left the party."

Jeff's Account

When asked when he saw Hailey next after the skiing season ended, Jeff stated that he saw Hailey from time to time around campus. When asked if she saw Hailey at an off-campus party on March 4, Jeff stated, "Yeah, that sounds right." When told of Hailey's account that he was not really friends with the person who threw the party, Jeff stated, "I was invited to a party. I went to the party. This is college. I've been at parties where I don't even know who is throwing the party."

When told of Hailey's account that Jeff followed her from room to room, Jeff stated, "It was a small house, and our paths crossed a few times during the night. That doesn't mean I was following her."

When told of Hailey's account that Jeff cornered her in the kitchen and talked with her, Jeff stated, "I did not corner her. I went into the kitchen to get a drink, and she was in there. We had a brief conversation." When told of Hailey's account that Jeff asked how Hailey was, told her he missed her, and asked if they could hang out soon, Jeff stated, "Yeah, I said those things. We had been friends and hung out for months. Just because we made out one night, I didn't think the friendship needed to be over. I was just trying to keep the friendship." Jeff stated, "I knew things were weird between us, and that bothered me. I was trying to fix that."

When asked how Hailey responded to what he said, Jeff stated, "She blew me off, said she was busy. That was the end of it." Jeff stated, "I don't feel like I crossed any line by talking to a friend at a party. She is completely blowing this out of proportion."

When asked if anyone else was in the kitchen during their conversation, Jeff stated, “There might have been people who came into the kitchen, but I couldn’t tell you who they were.” Jeff stated that he was at the party with his friends, Matt² and Tyler.

Courtney’s Account

Courtney stated that she went to a party with Hailey at their friend’s house on March 4, 2022. Courtney stated that Hailey was “really bothered” that Jeff was at the party. Courtney stated that “at some point” in the night, Hailey came to find her to tell her she needed to leave because she’d “had a confrontation with Jeff.” When asked what she meant by “confrontation,” Courtney stated, “Hailey just came up to me all upset and said she had run into Jeff in the kitchen and needed to leave the party immediately.” When asked what happened next, Courtney stated, “I offered to go home with Hailey, but she told me she needed to be alone, and she left.”

When asked if she noticed any other interactions between Jeff and Hailey during the party, Courtney stated, “No. I didn’t see them interact at all. I saw him a few times during the night. He seemed to be hanging out with his friends.”

Tyler’s Account

Tyler stated that he went to a party with Jeff at a house off campus on March 4, 2022. When asked if he knew whether Jeff knew that Hailey was going to be at the party, Tyler stated, “Not that I know of. I guess he could have known that it was a possibility. Hailey is pretty good friends with some of the people who live in the house.” When asked if he saw Jeff and Hailey interact during the party, Tyler stated, “Jeff mentioned that they talked at some point, but I didn’t see it.” When asked if he noticed Jeff following Hailey during the party, Tyler stated, “No. Definitely not.”

March 10, 2022 Poetry Reading

Hailey’s Account

Hailey stated that she is an English major and that on March 10 she participated in a poetry reading in the University Fine Arts Center. Hailey stated that Jeff showed up to the event, even though he is a biology major. Hailey stated, “He wasn’t friends with anyone else who was doing a reading that night. He came because my name was listed on the flyer for the event.”

Hailey stated that she “caught Jeff staring at [her] several times during the event—especially during [her] reading.” Hailey stated that she was “so anxious and upset” that she “couldn’t concentrate on [her] reading” and was “having a panic attack” during the reading.

Hailey stated that she skipped the social time after the event and went straight home in order to avoid running into Jeff. When asked at her follow-up interview who else was at the poetry

² The Investigator emailed Matt Matthewson on multiple occasions to request an interview but did not receive a response.

reading, Hailey stated that the only people she knew were her professor and some classmates from her English courses, but she stated that she did not want to involve any of them in the investigation.

Jeff's Account

When asked if he recalled seeing Hailey at a poetry reading event on campus, Jeff stated, "Yes, I attended the event." When told of Hailey's account that Jeff only attended the event because he knew she was doing a reading, Jeff stated, "I went with Tyler and Matt. Matt's girlfriend was performing, so I said I would go with him. It wasn't because of Hailey. I mean, did I hope it would help us be friends again? Sure. I was supporting her when she did her reading. But that wasn't why I went."

When told of Hailey's account that she caught Jeff staring at her during the event, Jeff stated, "She was up front doing a reading. Where else was I supposed to be looking?"

When told of Hailey's account that she was so anxious and upset because of Jeff's presence at the event that she couldn't concentrate and was having a panic attack, Jeff stated, "No way. She seemed totally fine and did a great job. She was smiling throughout the night and seemed happy. You can ask anyone else there. She was fine."

Tyler's Account

When asked if he attended a poetry event in March, Tyler stated, "Yeah." When asked what he recalled about the event, Tyler stated, "Not much. I remember that Jeff brought it up and said we should all go. And then Matt said he was already going, I think his girlfriend was performing or something. So yeah, we went the three of us." When asked if he recalled anything about Hailey's demeanor during her reading, Tyler stated, "I remember she did a reading, but no, I don't remember anything about it."

March 15, 2022 Instagram Likes

Hailey's Account

Hailey stated that on March 15, Jeff "liked" an Instagram post on the Fine Arts Center's account containing pictures from the poetry reading, including several photos of Hailey. Hailey stated that on the same day, Jeff liked a photo of Hailey that one of her friends had tagged her in. Hailey stated that this was particularly upsetting because she had told Jeff to stop messaging her a few days earlier, and she had removed him as a follower on Instagram so that he would not see her posts. Hailey stated, "I wanted him to stop all communication, but he just wouldn't." Hailey stated, "It was also upsetting because it showed that he was still following me online. He couldn't see my posts anymore, but he like went out of his way to like photos of me. I just felt like there was no safe space."

Jeff's Account

When asked if he liked two Instagram posts with photos of Hailey on March 15, Jeff stated, "I might have" and proceeded to check his Instagram account to confirm that he had. Jeff stated, "I like tons of posts every day. They showed up in my feed. I had been at the poetry event. I liked it. The other picture is of a bunch of girls on the ski team. I'm not sure I even knew she was in the picture." When told of Hailey's account that she had removed him as a follower, Jeff stated, "Maybe, but I honestly didn't even notice. She doesn't post that often."

March 17, 2022 Note on Hailey's Car

Hailey's Account

Hailey stated that on March 17, she found a note on her car that read, "I still miss you. Text when you are ready to talk." Hailey stated that she "became so scared that [she] ran back to [her] dorm and locked the door." When asked if she still had the note, Hailey stated, "No, I threw it in the trash as soon as I could."

When asked about the impact that Jeff's conduct has had on her, Hailey stated, "I'm genuinely scared, and I have been for so long, especially with the note on my car. I avoid going out by myself cause I don't want to be caught alone and run into him. And I had to stop going to the cafeteria cause every time I went, he would be sitting at this table right by the entrance. I just couldn't face him."

Jeff's Account

When asked if he left a note on Hailey's car on or around March 17, Jeff stated, "Yeah, I left a quick note. I guess it was a last-ditch effort to salvage the friendship and make sure she was okay. Obviously now I wish I hadn't written it." When asked what the note said, Jeff stated, "Something like, I'm here if you want to talk." Jeff stated, "I was genuinely worried about her. I'd been hearing that she wasn't doing very well academically, and I knew that she'd been struggling with anxiety and depression off and on throughout the year. I just wanted her to know I was there for her." When told of Hailey's account that the note said, "I still miss you. Text when you are ready to talk," Jeff stated, "Pretty sure I didn't write, 'I still miss you.'"

When asked about Hailey's account that she stopped going to the cafeteria because he was frequently sitting at a table by the entrance, Jeff stated, "That's where the ski team always sits. I mean, I'm not there all the time. That's ridiculous. But I go to this school too and yeah, sometimes I eat in the cafeteria. Me being in the cafeteria has nothing to do with Hailey."

2022 Title IX/VAWA Investigator Training

Handout 7

Excerpts from Party Statements in Response to the Investigation Report

Excerpt from Hailey's Response to the Investigation Report

Jeff made it sound like if I wasn't wearing a bra that that was an invitation for him to touch my breasts. My clothing choices do not give anyone the right to touch me without my consent. Jeff's argument is like saying a woman who dresses provocatively is "asking for it." Jeff's statements should be removed from the report.

Excerpt from Jeff's Response to the Investigation Report

I told the investigator that she should talk to people at the poetry reading, but she didn't because Hailey asked her not to. Anyone at the reading could tell the investigator that Hailey was fine. Their testimony would prove that she is just making things up to blow this all out of proportion. And it's not right for her to be able to eliminate witnesses. If a witness saw what happened, the investigator needs to talk to that witness.

The policy says that words *or overt actions* can show consent. Hailey invited me to come over to "watch Netflix and chill," which everyone knows means to have sex or mess around while watching. She took off her bra and she moved her arms out of the way as I moved my hand up along her stomach toward her breasts. These were words and overt actions that showed that she consented. She also said that she was ok with it. If she did all of those things, there is no way that I should be found guilty of sexual assault.

2022 Title IX/VAWA Investigator Training

Handout 8

Summary of Hearing

- Matt did not participate in the hearing.
- The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following:
 - The panel called Hailey’s roommate, Molly, as a new witness. Molly confirmed the parties’ account that she came home while they were kissing on the couch. Molly stated that when she walked in the door, she saw Jeff and Hailey on the couch together. Molly stated that she “could tell [she] had interrupted something, because they were like scrambling around and then totally acting weird.” Molly stated that she went straight to her room and didn’t see Jeff again that night. Molly stated that when she came out of her room to get ready for bed, she asked Hailey how her night was. Molly stated that Hailey replied, “I don’t want to talk about it.” Molly stated that Hailey seemed really upset and her eyes looked red, like she’d been crying.
 - The panel called Hailey’s English professor who organized the poetry reading. When asked about Hailey’s demeanor and performance at the reading, the professor stated, “She seemed a little off during her reading. I mean, she still did well, but she did seem a little distracted. Not quite as polished as normal.”
 - The panel asked Jeff’s friend Tyler if he had talked to Jeff about Hailey during the spring semester. Tyler stated, “Yeah, I mean, we all knew that he really liked her and was pretty bummed when things didn’t work out and she kinda cut him out.” When asked what he meant by Hailey cutting Jeff out, Tyler stated, “Like, she stopped talking to him at all and wouldn’t respond to messages.” When asked how he knew Jeff was “bummed” after Hailey “cut him out,” Tyler stated, “Well, he was just still constantly talking about her. I think he’d been really excited about her, and it was hard for him to, like, let her go, you know?”

2022 Title IX/VAWA Investigator Training

Handout 9

Excerpts from Adjudicator Outline

Review Policy definitions in handout #4

Hailey’s Allegation of Sexual Assault

- Hailey alleged that Jeff engaged in sexual assault by touching her breasts without her consent.
- What sexual contact occurred?
 - Did Jeff touch Hailey’s breasts?.....Yes No
- For each sexual contact you found occurred, who initiated the contact?
 - Did Jeff initiate touching Hailey’s breasts?.....Yes No
- If Jeff initiated the sexual contact, did Hailey consent to the sexual contact?
 - Did Hailey consent to Jeff touching her breasts?.....Yes No

Do you find Jeff responsible for Sexual Assault for touching Hailey’s breasts? Yes No

Rational for finding:

Hailey’s Allegation of Stalking

- Hailey alleged that Jeff engaged in Stalking. Specifically, Hailey alleged that:
 - Between February 20, 2022 and March 5, 2022, Jeff sent multiple unwelcome messages to Hailey via Snapchat.
 - On February 24, 2022, during Nordic Skiing Club practice, Jeff communicated to Hailey through their teammate Beth.
 - On February 26, 2022, at an off-campus Nordic Skiing Club event, Jeff followed and stared at Hailey.
 - On March 4, 2022, at an off-campus house party, Jeff followed and communicated to Hailey.
 - On March 10, 2022, during a poetry reading event in the University Fine Arts Center, Jeff followed and stared at Hailey.
 - On March 15, 2022, Jeff liked two Instagram postings containing pictures of Hailey.

- On March 17, 2022, in University Parking Lot D, Jeff left a note on Hailey’s car.
- What conduct occurred? (Fill in below)
- Was the conduct you found to have occurred part of a course of conduct directed at Hailey? (Fill in below)
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through others (by any action, method, device, or means), follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person’s property.

Alleged Conduct	Did it occur? (yes/no)	Was it part of a course of conduct directed at Hailey? (yes/no)
Feb 20-Mar 5 Snapchat Messages		
Feb 24 Communication through Beth		
Feb 26 Ski Event Following/Staring		
Mar 4 Party Following/Communicating		
Mar 10 Poetry Reading Following/Staring		
Mar 15 Instagram Likes		
Mar 17 Note on car		

- Would the conduct you found to have occurred and you found to be part of a course of conduct directed at Hailey cause a reasonable person in Hailey’s circumstances to (1) fear for their safety or the safety of others or (2) suffer substantial emotional distress? Yes No
 - Consider the impact of the conduct you found to be part of the course of conduct collectively when determining the impact on the complainant.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.

Do you find Jeff responsible for Stalking? Yes No

Rationale for finding:

Sanctions (if applicable):

Rationale for sanctions: